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**1997**

# ***Illinois Register***

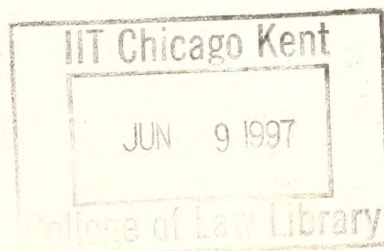
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## **Rules of Governmental Agencies**

Volume 21, Issue 23 — June 06, 1997

Pages 6634 - 6942

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Index Department  
Administrative Code Div.  
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Springfield, IL 62756  
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## TABLE OF CONTENTS

June 6, 1997 Volume 21, Issue 23

### PROPOSED RULES

#### AGING, DEPARTMENT ON

##### Board And Care Facilities Registration

89 Ill. Adm. Code 290 .....6634

#### HISTORIC PRESERVATION AGENCY, ILLINOIS

##### Rules For The Protection, Treatment And Inventory Of Archaeological And Paleontological Resources On Public Lands

17 Ill. Adm. Code 4190 .....6642

#### MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES, DEPARTMENT OF

##### Early Intervention Program

59 Ill. Adm. Code 121 .....6673

##### Minimum Standards For Certification Of Developmental Training Programs

59 Ill. Adm. Code 119 .....6680

##### Minimum Standards For Licensure Of Community Residential Alternatives

59 Ill. Adm. Code 113 .....6689

##### Standards And Licensure Requirements For Community-Integrated Living Arrangements

59 Ill. Adm. Code 115 .....6695

#### PUBLIC HEALTH, DEPARTMENT OF

##### Illinois Veterans' Homes Code

77 Ill. Adm. Code 340 .....6704

##### Control of Tuberculosis Code

77 Ill. Adm. Code 696 .....6716

##### Intermediate Care For The Developmentally Disabled Facilities Code

77 Ill. Adm. Code 350 .....6739

##### Long-Term Care For Under Age 22 Facilities Code

77 Ill. Adm. Code 390 .....6755

##### Sheltered Care Facilities Code

77 Ill. Adm. Code 330 .....6770

##### Skilled Nursing And Intermediate Care Facilities Code

77 Ill. Adm. Code 300 .....6786

#### REVENUE, DEPARTMENT OF

##### Retailers' Occupation Tax

86 Ill. Adm. Code 130 .....6801

##### The Gas Revenue Tax Act

86 Ill. Adm. Code 470 .....6819

#### STATE POLICE MERIT BOARD, DEPARTMENT OF

##### Procedures Of The Department Of State Police Merit Board

80 Ill. Adm. Code 150 .....6825

## ADOPTED RULES

### AGING, DEPARTMENT ON

Community Based Residential Facilities demonstration Project  
89 Ill. Adm. Code 280 .....6831

### COMMERCE AND COMMUNITY AFFAIRS, DEPARTMENT OF

State Mandates Program  
53 Ill. Adm. Code 200 .....6841

### LABOR, DEPARTMENT OF

Whistleblower Protection  
56 Ill. Adm. Code 353 .....6845

### POLLUTION CONTROL BOARD

Livestock Waste Regulations  
35 Ill. Adm. Code 506 .....6851

### PUBLIC AID, DEPARTMENT OF

Medical Payment  
89 Ill. Adm. Code 140 .....6899

### REVENUE, DEPARTMENT OF

Property Tax Code  
86 Ill. Adm. Code 110 .....6921

## EMERGENCY RULES

### SECRETARY OF STATE

The Use Of The Capitol Complex Facilities  
71 Ill. Adm. Code 2005 .....6927

## NOTICE OF PUBLIC HEARINGS

### NATURAL RESOURCES, DEPARTMENT OF

Sport Fishing Regulations For The Waters Of Illinois  
17 Ill. Adm. Code 810 .....6930

## AGENCY NOTICES OF MODIFICATION, WITHDRAWAL OR REFUSAL TO PROPOSED RULES

### REVENUE, DEPARTMENT OF

Retailers' Occupation Tax  
86 Ill. Adm. Code 130, Withdrawal .....6931  
The Gas Revenue Tax Act  
86 Ill. Adm. Code 470, Withdrawal .....6932



## REGULATORY AGENDA

PUBLIC HEALTH, DEPARTMENT OF  
Control of Tuberculosis Code  
77 Ill. Adm. Code 696 .....

6933

## JOINT COMMITTEE ON ADMINISTRATIVE RULES

Second Notices Received .....6941

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Jan. 7, 1997	Jan. 14, 1997	3	Jan. 17, 1997	July 15, 1997	July 22, 1997	30	July 25, 1997
Jan. 14, 1997	Jan. 21, 1997	4	Jan. 24, 1997	July 22, 1997	July 29, 1997	31	Aug. 1, 1997
Jan. 21, 1997	Jan. 28, 1997	5	Jan. 31, 1997	July 29, 1997	Aug. 5, 1997	32	Aug. 8, 1997
Jan. 28, 1997	Feb. 4, 1997	6	Feb. 7, 1997	Aug. 5, 1997	Aug. 12, 1997	33	Aug. 15, 1997
Feb. 4, 1997	Feb. 11, 1997	7	Feb. 14, 1997	Aug. 12, 1997	Aug. 19, 1997	34	Aug. 22, 1997
Feb. 11, 1997	Feb. 18, 1997	8	Feb. 21, 1997	Aug. 19, 1997	Aug. 26, 1997	35	Aug. 29, 1997
Feb. 18, 1997	Feb. 25, 1997	9	Feb. 28, 1997	Aug. 26, 1997	Sept. 2, 1997	36	Sept. 5, 1997
Feb. 25, 1997	Mar. 4, 1997	10	Mar. 7, 1997	Sept. 2, 1997	Sept. 9, 1997	37	Sept. 12, 1997
Mar. 4, 1997	Mar. 11, 1997	11	Mar. 14, 1997	Sept. 9, 1997	Sept. 16, 1997	38	Sept. 19, 1997
Mar. 11, 1997	Mar. 18, 1997	12	Mar. 21, 1997	Sept. 16, 1997	Sept. 23, 1997	39	Sept. 26, 1997
Mar. 18, 1997	Mar. 25, 1997	13	Mar. 28, 1997	Sept. 23, 1997	Sept. 30, 1997	40	Oct. 3, 1997
Mar. 25, 1997	Apr. 1, 1997	14	Apr. 4, 1997	Sept. 30, 1997	Oct. 7, 1997	41	Oct. 10, 1997
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Apr. 8, 1997	Apr. 15, 1997	16	Apr. 18, 1997	Oct. 14, 1997	Oct. 21, 1997	43	Oct. 24, 1997
Apr. 15, 1997	Apr. 22, 1997	17	Apr. 25, 1997	Oct. 21, 1997	Oct. 28, 1997	44	Oct. 31, 1997
Apr. 22, 1997	Apr. 29, 1997	18	May 2, 1997	Oct. 28, 1997	Nov. 4, 1997	45	Nov. 7, 1995
Apr. 29, 1997	May 6, 1997	19	May 9, 1997	Nov. 4, 1997	Nov. 10, 1997*	46	Nov. 14, 1997
May 6, 1997	May 13, 1997	20	May 16, 1997	Nov. 10, 1997*	Nov. 18, 1997	47	Nov. 21, 1997
May 13, 1997	May 20, 1997	21	May 23, 1997	Nov. 18, 1997	Nov. 25, 1997	48	Dec. 1, 1997*
May 20, 1997	May 27, 1997	22	May 30, 1997	Nov. 25, 1997	Dec. 2, 1997	49	Dec. 5, 1997
May 27, 1997	June 3, 1997	23	June 6, 1997	Dec. 2, 1997	Dec. 9, 1997	50	Dec. 12, 1997
June 3, 1997	June 10, 1997	24	June 13, 1997	Dec. 9, 1997	Dec. 16, 1997	51	Dec. 19, 1997
June 10, 1997	June 17, 1997	25	June 20, 1997	Dec. 16, 1997	Dec. 23, 1997	52	Dec. 26, 1997
June 17, 1997	June 24, 1997	26	June 27, 1997	Dec. 23, 1997	Dec. 30, 1997	1	Jan. 2, 1998
June 24, 1997	July 01, 1997	27	July 7, 1997*	Dec. 30, 1997	Jan. 6, 1998	2	Jan. 9, 1998

Please note: When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday (the day before).

\* Monday

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## DEPARTMENT ON AGING

## NOTICE OF PROPOSED RULES

1) Heading of the Part: Board and Care Facilities Registration

2) Code Citation: 89 Ill. Adm. Code 290

3) Section Numbers: Proposed Action:

290.100	New Section
290.105	New Section
290.200	New Section
290.205	New Section
290.210	New Section
290.215	New Section
290.220	New Section
290.300	New Section
290.305	New Section
290.400	New Section
290.405	New Section

4) Statutory Authority: 225 ILCS 7; 20 ILCS 105/4.01(1), 4.04(c) and 5.02

5) A Complete Description of the Subjects and Issues Involved: The proposed rulemaking establishes a system of registration and assurances that board and care facilities are to file with the Illinois Department on Aging. The Department will maintain a board and care registry.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their written comments concerning this rulemaking, within 45 days after the date of this issue of the *Illinois Register*, to:

Ms. Pamela W. Balmer, Assistant  
Office of General Counsel  
Illinois Department on Aging  
421 East Capitol Avenue #100  
Springfield, IL 62701-1789  
Attention: Board and Care Facilities Registration  
(217) 785-3346

## DEPARTMENT ON AGING

## NOTICE OF PROPOSED RULES

The rule amendments will have an impact on small businesses. In accordance with Sections 1-20 and 5-20 of the Illinois Administrative Procedure Act, any small business may present their comments to Ms. Pamela W. Balmer, at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on the rule amendment shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses affected: Businesses operating board and care facilities containing 2 to 11 beds.

B) Reporting, bookkeeping or other procedures required for compliance: Board and care facilities will be required to register, provide assurances and submit the names of owners and managers for criminal background checks to the Department.

C) Types of professional skills necessary for compliance: Various administrative and direct service skills would be necessary to establish and maintain compliance with the assurances filed with the Department by the facility as part of the registration process.

13) Regulatory Agenda on which this rulemaking was summarized: July 1996

The full text of the Proposed Rules begins on the next page:

## DEPARTMENT ON AGING

## NOTICE OF PROPOSED RULES

TITLE 89: SOCIAL SERVICES  
CHAPTER II: DEPARTMENT ON AGINGPART 290  
BOARD AND CARE FACILITIES REGISTRATION

## SUBPART A: INTRODUCTION

Section  
290.100 Board and Care Facilities Registration  
290.105 Definitions

## SUBPART B: PROCESS OF REGISTRATION

Section  
290.200 Registration  
290.205 Fee  
290.210 Assurances  
290.215 Posting of Assurances  
290.220 Renewal of Registration

## SUBPART C: REFUSAL, SUSPENSION AND BACKGROUND CHECKS

Section  
290.300 Refusal or Suspension of Registration  
290.305 Criminal Background Checks

## SUBPART D: THE REGISTRY

Section  
290.400 Registry Publication  
290.405 Advertising

AUTHORITY: Implementing Section 3 of the Board and Care Home Registration Act [225 ILCS 7] and authorized by Sections 4.01(11) and 4.04(c) of the Illinois Act on the Aging [20 ILCS 105/4.01(11) and 4.04(c)] (see also Public Act 89-387, effective August 20, 1995).

SOURCE: Adopted at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: INTRODUCTION

## Section 290.100 Board and Care Facilities Registration

This Part describes the responsibilities of the Department in the registration of board and care facilities in the State.

## DEPARTMENT ON AGING

## NOTICE OF PROPOSED RULES

## Section 290.105 Definitions

"Board and care facility" or "facility" means a publicly or privately operated residence which is providing room, housekeeping and meals to 2 to 11 persons who are unrelated to the owners and the managers of the residence.

"Department" means the Illinois Department on Aging.

"Independent self-care" means a level of functioning in which the resident does not require assistance for eating, medicating, moving, dressing or bathing.

"Manager" means the person with the responsibility of managing the facility on a day to day basis.

"Other types of assistance" means laundry, transportation and recreational services, but cannot include the provision of personal care. (See Section 1-120 of the Nursing Home Care Act [210 ILCS 45/1-120].)

"Owner" means the person, business, entity, organization or corporation holding legal title to the facility.

"Protective oversight" means reasonable measures by the facility to provide security for the facility, the residents of the facility, and the possessions of the residents.

"Registry" means the list of board and care facilities in the State created and maintained by the Illinois Department on Aging.

"Resident" means a person who is residing in a board and care facility.

## SUBPART B: PROCESS OF REGISTRATION

## Section 290.200 Registration

a) Each board and care facility in the State shall register with the Department on a form prescribed by the Department.  
b) The application for registration shall include, but not be limited to, the following information:

- 1) the name of the facility;
- 2) the address of the facility;
- 3) the phone number of the facility;
- 4) the name and address of the person, business, entity, organization, or corporation that owns the facility;
- 5) the name and address of the person, business, entity,



## DEPARTMENT ON AGING

## NOTICE OF PROPOSED RULES

- organization, or corporation serving as the manager of the facility, if different from the owner;
- 6) the maximum number of residents that the facility is capable of housing;
  - 7) the actual number of residents at the time of registration;
  - 8) the average number of residents during the 12 months prior to the date of registration;
  - 9) the full time equivalent number of staff members serving the residents of the facility at the time of registration;
  - 10) the average full time equivalent number of staff members during the 12 months prior to the date of registration;
  - 11) the name of the residents' elected representative or the presiding officer of the residents' council, if any, at the time of registration;
  - 12) the price schedule of the facility, including all charges in addition to basic room and board;
  - 13) the name and address of at least one individual who shall be responsible for receiving from the Department all communications and notices pursuant to, or required by, this Part; and
  - 14) waivers of confidentiality executed by the owners and managers of the facility. (See Section 290.220(a) of this Part.)
- c) The facility shall attach copies of the following to the application for registration:
- 1) any brochures distributed to the public or to prospective residents or their families by the facility;
  - 2) a copy of the admission agreement; and
  - 3) a copy of the resident's rights brochure distributed to the residents upon admission.
- d) The facility shall, within 15 days, file with the Department any changes, revisions, or additions to the information on the registry.

**Section 290.205 Fee**

The application fee for registration, which shall accompany the application for registration, shall be \$100.

**Section 290.210 Assurances**

The application for registration shall include assurances, which shall be signed by the owners or managers, or a responsible officer of the entity, organization or corporation owning or managing the facility, which shall provide:

- a) that the facility shall comply with all applicable federal, State or local statutes, laws, ordinances, codes, regulations or rules, including all applicable fire, safety, health, and zoning codes;
- b) that the owners, managers and staff of the facility will protect the rights and safety of the residents of that facility;
- c) that the owners and managers of the facility understand that

## DEPARTMENT ON AGING

## NOTICE OF PROPOSED RULES

- registration under this Part does not otherwise exempt the facility from the applicability of the Nursing Home Care Act [210 ILCS 45];
- d) that the owners, managers and staff of the facility will permit access to residents of the facility to personnel of the Department, and to its designated agents, for the purposes of investigating and evaluating the quality of life in the facility; determining whether the facility should be reported to the Illinois Department of Public Health as an unlicensed nursing home facility; and investigating, evaluating and doing casework follow up in cases of alleged, suspected or substantiated elder abuse, neglect or financial exploitation;
  - e) that each resident in the facility is capable of independent self care;
  - f) that every resident will be provided, at the time of the facility's initial registration with the Department and subsequently upon admission, a brochure describing the rights of the resident and the procedures of the facility to enforce and protect those rights;
  - g) that every resident will be notified, at the time of the facility's initial registration with the Department, or subsequently upon admission, that the facility is a registered facility with the Department, and that such registration does not indicate that the facility is licensed under the Nursing Home Care Act; and
  - h) that neither the owners nor the managers of the facility have been convicted of committing or attempting to commit any of the offenses listed under Section 290.305(b) of this Part.

**Section 290.215 Posting of Assurances**

Each facility shall post, in a public place within the facility and visible to the residents, a copy of the assurances given the Department.

**Section 290.220 Renewal of Registration**

- a) The registration shall be valid for a period of two years.
- b) Not more than 60 days, nor fewer than 25 days, prior to the date of expiration of registration, the Department shall mail a notice of expiration of registration to the person designated pursuant to Section 290.200(b)(13) of this Part for purposes of receiving communications from the Department.

**SUBPART C: REFUSAL, SUSPENSION AND BACKGROUND CHECKS****Section 290.300 Refusal or Suspension of Registration**

- a) The Department reserves the right to delay the registration of any facility based on a pending investigation or action against such facility by the Department of Public Health, the Department of Public Aid, the Department's Elder Abuse and Neglect Program, the Attorney General or a State's Attorney. The Department will notify the facility

DEPARTMENT ON AGING

NOTICE OF PROPOSED RULES

also state that such registration does not imply licensing under, or compliance with, the Nursing Home Care Act [210 ILCS 45].

DEPARTMENT ON AGING

NOTICE OF PROPOSED RULES

of such delay and the reason therefor. Upon the resolution of such investigation or action, the Department may suspend or refuse the registration of such facility, if:

- 1) a violation has been found as a result of the investigation or action; and
  - 2) such violation would seriously impair, endanger or violate the rights, health, welfare or safety of one or more residents.
- b) The Department may restore the registration or accept the application for registration of a facility upon notification by the appropriate Department, the Attorney General or a State's Attorney that the facility has taken appropriate corrective or remedial measures and is now in substantial compliance with the applicable standard, rule, ordinance or law.

Section 290.305 Criminal Background Checks

- a) The Department will make appropriate arrangements with the Illinois State Police and other law enforcement agencies to conduct random criminal background checks on the owners and managers of facilities. The ratio of applications for registration checked will be determined by the Department based on the availability of funds generated by the application fee. Each application for registration will include the appropriate waivers of confidentiality to be signed by the owners and managers of the facility.
- b) The Department shall refuse or suspend the registration of any facility in which the owners or managers have been convicted of committing or attempting to commit one or more of the offenses defined in Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-19, 12-21, 16-1, 16-1.3, 16A-3, 18-1, 18-2, 19-1, 19-3, 19-4, 20-1, 20-1.1, 24-1, or 24-1.2 of the Criminal Code of 1961 [720 ILCS 5]; those defined in Sections 5, 5.1, or 9 of the Cannabis Control Act [720 ILCS 550]; or those defined in Sections 401, 401.1, 404, 405, 405.1, 407, 407.1 of the Illinois Controlled Substances Act [720 ILCS 570].

SUBPART D: THE REGISTRY

Section 290.400 Registry Publication

The Department may compile, publish and distribute a registry of board and care facilities.

Section 290.405 Advertising

Facilities that are registered with the Department may advertise to the public that the facility is a "registered board and care facility" but, if so, must



## ILLINOIS HISTORIC PRESERVATION AGENCY

## NOTICE OF PROPOSED RULES

## ILLINOIS HISTORIC PRESERVATION AGENCY

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Rules for the Protection, Treatment and Inventory of Archaeological and Paleontological Resources on Public Lands

- 2) Code Citation: 17 Ill. Adm. Code 4190

3) Section Numbers Proposed Action:

4190.101	New Section
4190.102	New Section
4190.103	New Section
4190.104	New Section
4190.105	New Section
4190.106	New Section
4190.107	New Section
4190.201	New Section
4190.202	New Section
4190.203	New Section
4190.204	New Section
4190.205	New Section
4190.206	New Section
4190.301	New Section
4190.302	New Section
4190.303	New Section
4190.401	New Section
4190.402	New Section
4190.403	New Section
4190.404	New Section
4190.405	New Section
4190.406	New Section
4190.407	New Section
4190.408	New Section
4190.409	New Section
4190.410	New Section
4190.501	New Section
4190.601	New Section
4190.602	New Section
4190.603	New Section

- 4) Statutory Authority: Subparts A and B implement and are authorized by Section 11 of the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435]. Subpart C implements and is authorized by Section 10 of the Archaeological and Paleontological Resources Protection Act [20

## I.H.P.A.

## NOTICE OF PROPOSED RULES

ILCS 3435]. Subparts D and E implement and are authorized by Section 9 of the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435].

- 5) Complete Description of the Subjects and Issues Involved: Subparts A and B provide definitions of terms and procedures to be followed for the protection and treatment of archeological and paleontological sites on public lands. Subpart C outlines procedures for the establishment and maintenance of a site inventory and for release of site information. Subparts D and E establish professional standards for archaeologists and paleontologists performing investigations on public lands within Illinois.

The Agency asks that each of the three Subpart groups be considered separately. Since each Subpart group has separate statute authority, the Agency reserves the right to pursue Second Notice and adoption of each of the three subpart groups independently.

- 6) Will this proposed rule replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule contain incorporations by reference? Yes
- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rule does not expand the state mandate as defined in Section 3(b) of the State Mandate Act [30 ILCS 805/3].

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

William Wheeler  
State Historic Preservation Officer  
Illinois Historic Preservation Agency  
1 Old State Capitol Plaza  
Springfield, Illinois 62701  
217/785-9045

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Sections 4190.404 through 407 establish certification requirements for archaeologists and paleontologists and may have an effect on contractual or research archaeologists or paleontologists.

I.H.P.A.

NOTICE OF PROPOSED RULES

TITLE 17: CONSERVATION  
CHAPTER VI: ILLINOIS HISTORIC PRESERVATION AGENCY

PART 4190: RULES FOR THE PROTECTION, TREATMENT, AND INVENTORY OF  
ARCHAEOLOGICAL AND PALEONTOLOGICAL RESOURCES ON PUBLIC LANDS

SUBPART A: PROTECTION OF ARCHAEOLOGICAL AND  
PALEONTOLOGICAL RESOURCES ON PUBLIC LANDS

Section	Purpose of Rules
4190.101	Definitions
4190.102	Exceptions
4190.103	Unexpected Discovery of Archaeological and Paleontological Resources on Public Lands
4190.104	Hearings and Appeals
4190.105	Custody and Curation
4190.106	Museum Policy on the Scientific Curation, Conservation, and Loan of Archaeological and Paleontological Resources
4190.107	

SUBPART B: PROHIBITED ACTS; PENALTIES

Section	Prohibited Acts; Notification of Agency
4190.201	Criminal Penalties
4190.202	Civil Penalties
4190.203	Civil Damages
4190.204	Penalty Amounts
4190.205	Rewards
4190.206	

SUBPART C: ILLINOIS INVENTORY OF ARCHAEOLOGICAL AND  
PALEONTOLOGICAL SITES

Section	Purpose of Inventory
4190.301	Inventorying of Archaeological and Paleontological Sites
4190.302	Release of Site Information
4190.303	

SUBPART D: CERTIFICATION OF PROFESSIONAL ARCHAEOLOGISTS AND  
PALEONTOLOGISTS

Section	Purpose
4190.401	Certification Requirements
4190.402	Application Procedures
4190.403	Requirements for Supervisory Archaeological Field Technician
4190.404	Certification

I.H.P.A.

NOTICE OF PROPOSED RULES

B) Reporting, bookkeeping, or other procedures required for compliance:  
Section 4190.302 requires document and record maintenance related to  
the inventory of sites.

C) Types of professional skills necessary for compliance: Archaeologists  
and Paleontologists working on public lands must be certified under  
the requirements of Sections 4190.404 through 407.

13) Regulatory Agenda on which this rulemaking was summarized: This  
rulemaking is a rewrite of a rulemaking that was withdrawn in response to  
JCAR objection earlier this year. The original regulatory agenda was  
published in January 1995.

The full text of the Proposed Rule(s) begins on the next page:



I.H.P.A.

## NOTICE OF PROPOSED RULES

- 4190.405 Requirements for Supervisory Professional Prehistoric or Historic Field Archaeologist Certification  
 4190.406 Requirements for Certified Professional Underwater Archaeologist  
 4190.407 Requirements for a Certified Professional Paleontologist Certification Approval  
 4190.408 Denial of Certification  
 4190.410 Suspension or Revocation of Certification  
 4190.501 Hearings and Appeals

SUBPART E: ILLINOIS PROFESSIONAL ARCHAEOLOGISTS' CODE OF ETHICS AND STANDARDS OF RESEARCH PERFORMANCE

Section  
 4190.601 Purpose  
 4190.602 Code of Ethics  
 4190.603 Standards of Research Performance

AUTHORITY: Implementing and authorized by the Archaeological and Paleontological Resources Protection Act [20 ILCS 3435].

SOURCE: Adopted at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: PROTECTION OF ARCHAEOLOGICAL AND PALEONTOLOGICAL RESOURCES ON PUBLIC LANDS

Section 4190.101 Purpose of Rules

This Part implements the provisions and intent of the Archeological and Paleontological Resources Protection Act [20 ILCS 3435]. The State reserves to itself the exclusive right to control archaeological and significant paleontological resources on public lands in order to protect and preserve scientific and cultural information, artifacts, and materials. As part of that process, this Part mandates the maintenance of a State site file containing all known archaeological and significant paleontological resource locations and set standards for professional archaeologists and paleontologists working on public lands within the State of Illinois. Furthermore, it is the purpose of this Part to encourage the preservation and protection of archaeological and paleontological resources on both private and public lands and to discourage their exploitation and destruction by vandalism, looting, commercial development, and construction. Publicly-owned resources should be considered as scientific and educational preserves that are held in trust for future generations and will be given the highest level of preservation and protection from both planned and unplanned disturbances. This Part is not intended to discourage collection of common invertebrate and/or plant fossils by educational groups, the scientific community, and the public where not otherwise prohibited. Invertebrate fossils are very common in the rocks of Illinois. This Part is intended for archaeological resources, significant

I.H.P.A.

## NOTICE OF PROPOSED RULES

paleontological resources, and extremely significant invertebrate and plant fossil localities on public lands.

Section 4190.102 Definitions

"Act" means 20 ILCS 3435, the Archeological and Paleontological Resources Protection Act.

"Adequate historical documentation" is information verifiable through at least two of the following types of independent sources: public records, deeds, maps, and other written and oral sources.

"Agency" means the Illinois Historic Preservation Agency.

"Agency Archaeologist" means an archaeologist who is certified at Level III under Section 4190.405(d)(3) of this Part and who is head of the Agency archaeology program.

"Archaeological resource" means any significant material remains or localities of past human life or activities on public land including, but not limited to, artifacts, historic and prehistoric human skeletal remains, mounds, earthworks, shipwrecks, forts, village sites, or mines.

"Attorney General" means the Attorney General of the State of Illinois.

"Certified professional archaeologist" means an archaeologist certified by the Agency as described in Subpart D of this Part.

"Certified professional paleontologist" means a paleontologist certified by the Agency as described in Subpart D of this Part or as a licensed professional geologist under the auspices of the Professional Geologist Licensing Act [225 ILCS 745].

"Disturb" includes defacing, mutilating, injuring, exposing, removing, destroying, desecrating or molesting in any way. It does not include surface collecting of aerially exposed paleontological resources or removal of common invertebrate fossils with a small hand tool, such as a rock hammer.

"Director" means the Director of the Agency.

"Field investigation" means the study by a certified archaeologist of archaeological resources or by a certified paleontologist of paleontological resources at any land or water location by means of surveying, sampling, excavating, or removing subsurface objects or going on a site with that intent.

## I.H.P.A.

## NOTICE OF PROPOSED RULES

"Grave artifacts" means all relics, specimens, or objects of a historical, prehistorical, cultural, archaeological or anthropological nature of human manufacture or use which may be found above or below the surface of the earth and which were associated with human skeletal remains in any unregistered grave.

"Grave markers" are any tombs, monuments, stones, ornaments, mounds, or other items of human manufacture that is associated with an unregistered grave.

"Historic significance" means that the Director has determined that the archaeological resource has yielded or is likely to yield information concerning past patterns of human settlement, or artifacts or information concerning cultures in Illinois of more than 50 years ago.

"Human skeletal remains" or "human remains" means any part of the body of a deceased person in any stage of decomposition in a context indicating substantial evidence for an intentional or unintentional burial; or a disarticulated or articulated skeleton.

"Illinois Inventory of Archaeological and Paleontological Sites" shall be as described in Subpart C of this Part.

"Inventory" means the Illinois Inventory of Archaeological and Paleontological Sites as described in Subpart C of this Part.

"Material remains of past human life or activities" refers to any physical evidence of human habitation, occupation, use or activity. Such items of evidence include, but are not limited to:

surface, subsurface, or submerged structures (a specific example includes, but is not limited to, shipwrecks),

shelters, facilities (specific examples include, but are not limited to, forts and mines),

features (specific examples include, but are not limited to: domestic structures, human-made mounds, earthworks, canals, reservoirs, horticultural garden areas, rock alignments, cairns, middens, kilns, and post molds),

surface, subsurface, or submerged concentrations or scatters of artifacts,

whole or fragmentary tools, implements, containers, weapon projectiles, clothing, and ornaments (specific examples of these include, but are not limited to: pottery and other ceramics,

## I.H.P.A.

## NOTICE OF PROPOSED RULES

basketry, cordage, weavings, coins, bullets, bottles and other glassware, flaked stone, bone, metal, wood, hide, feathers, and pigments),

by-products of manufacture or use of human-made or natural materials, organic waste (specific examples include, but are not limited to: vegetal and animal remains, coprolites),

rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation,

rockshelters or caves containing any of the foregoing materials,

the physical site or location of any of the foregoing,

any portion or piece of any of the foregoing.

Coins, bullets and unworked minerals and rocks shall not be considered archaeological resources for purposes of the Act and this Part unless found in a direct physical relationship with archaeological resources as defined in this Section.

"Material remains of past life or traces" refers to any physical parts of plants or animals, other than humans, and evidence for the existence of past life. Such items of evidence include, but are not limited to:

complete or partial specimens of bones, teeth, and other body parts including, but not limited to, feathers, scales, and cuticles of vertebrate animals,

complete or partial specimens of skeletons, both organic and inorganic, including, but not limited to, chitin, cuticle, mineral constituents such as calcite and aragonite of shells, and other body parts of invertebrate animals,

complete and partial specimens of plant parts including, but not limited to, leaves, stems, flowers, spores, pollen, cuticles, fruiting bodies (e.g., seeds), roots, rhizomes, and tubers; and

complete and partial specimens of traces of life including, but not limited to, casts, molds, impressions, carbonizations, tracks, and stains.

"Mid-continental Region" means that part of the United States that falls within the states of Wisconsin, Michigan, Illinois, Indiana, Ohio, Kentucky, Tennessee, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Missouri, eastern Iowa and southeastern Minnesota.



I.H.P.A.

## NOTICE OF PROPOSED RULES

"Museum" means the Illinois State Museum.

"Museum Director" means the Director of the Illinois State Museum.

"Paleontological resource" means any significant fossil or material remains of past life, other than human, on public lands including traces or impressions of animals or plants that occur as part of the geological record that are known and are included in the files maintained by the Illinois State Museum under Section 10 of the Act.

"Permit" means a permit issued by the Agency pursuant to this Part.

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation or a receiver, trustee, guardian or other representative appointed by order of the court, the federal and State governments, including State universities created by statute, or any city, town, county or other political subdivision of this State.

"Primary rock body or sedimentary unit" means the rocks or sediments that occur in the location of their original deposition.

"Public land" means any land owned, but does not include land leased as lessee, by the State of Illinois or its agencies, a State university created by statute, a municipality or a unit of local government.

"Significant material remains or localities" means any archaeological resource that:

is listed in the National Register of Historic Places;

has been formally determined by the Director to be eligible for listing in the National Register of Historic Places as defined in the National Historic Preservation Act (16 U.S.C. 470) and its regulations;

has been nominated by the Director and the Illinois Historic Sites Advisory Council for listing in the National Register of Historic Places;

meets one or more of the criteria for listing in the National Register of Historic Places (36 CFR 60), as determined by the Director or is listed in the Illinois Register of Historic Places.

"Site" means the physical location of archaeological or paleontological resources.

I.H.P.A.

## NOTICE OF PROPOSED RULES

"Unregistered grave" means any grave or location (including any unmarked burial site) where a human body has been buried or deposited, that is over 100 years old, and that is not in a cemetery registered with the State Comptroller under the Cemetery Care Act [760 ILCS 100].

## Section 4190.103 Exceptions

Exceptions to the need to acquire a permit do not constitute a release from ownership, curation, or other Sections of the Act or other Parts of this Chapter. In addition to the exemptions granted in Section 8 of the Act, the following activities shall not require a permit:

- a) No permit is required where the proposed work consists of archaeological survey and/or data recovery undertaken and agreed to in writing by the Agency pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470) or the activities are permitted pursuant to the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. 1201 et seq.) or the rules and regulations promulgated thereunder or under any law, rule or regulation adopted by the State of Illinois thereunder.
- b) No permit is required where the proposed work consists of archaeological survey, testing or excavations undertaken and agreed to in writing by the Agency pursuant to the Human Skeletal Remains Protection Act [20 ILCS 3440].
- c) No permit is required where the proposed work consists of archaeological survey and/or data recovery undertaken and agreed to in writing by the Agency pursuant to the Illinois State Agency Historic Resources Preservation Act [20 ILCS 3420]. When a State agency's monies are used to support an archaeological research project, a permit shall be required if there is no impending or planned development or construction.
- d) No permit shall be required under this Part for any person conducting activities under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological or paleontological resources. However, if during the course of such work, archaeological or paleontological resources are discovered, the provisions of Section 4190.104 of this Part are applicable.
- e) No permit shall be required under the auspices of the Act or this Part for any person collecting on private lands.
- f) No permit shall be required under the auspices of this Part for any person visiting, diving on, viewing, electronically recording, photographing, mapping, drawing, or otherwise recording archaeological or paleontological resources provided that such activities do not result in the disturbance of these resources.
- g) No permit is required where the work consists of surface collecting of aerially exposed paleontological resources that are not covered by the primary rock body or sedimentary unit that has preserved the

I.H.P.A.

NOTICE OF PROPOSED RULES

paleontological resources or removal of common invertebrate fossils with a small hand tool, such as a rock hammer, unless otherwise prohibited.

h) No permit is required for the research, service, or educational activities of the Illinois State Geological Survey and Illinois State Museum of the Illinois Department of Natural Resources. Both the Museum and State Geological Survey are legislatively mandated to conduct geological research and educational programs.

i) No permit is required for the research, service, or educational activities of certified archaeologists employed at the Museum when conducting non-ground disturbing Phase I archaeological surveys on public lands. However, they shall comply with the notification and documentation requirements in Sections 6(c) and 8(a) of the Act.

j) Investigations by Agency Personnel. Any certified archaeologist carrying out official agency duties required under the Act need not follow the permit application procedures of this Section. However, the Agency shall insure that substantially similar procedures have been followed by other documented means.

k) Restrictions Under Other Laws. Under federal and other Illinois statutory, regulatory, or administrative authorities governing the use of public lands, authorizations may be required for activities which do not require a permit from the Agency. Any person wishing to conduct on public lands any activities related to, but believed to fall outside the scope of, the Act and this Part should consult the Agency or the unit of government believed to have authority with respect to such activity for the purpose of determining whether any authorization is required.

**Section 4190.104 Unexpected Discovery of Archaeological and Paleontological Resources on Public Lands**

a) Notification of Agency. Any person knowing or having reasonable grounds to believe that archaeological or paleontological resources protected by the Act are being disturbed, destroyed, defaced, mutilated, removed, excavated or exposed shall, as soon as possible, notify the Director and a local representative of the responsible land-managing agency.

b) Discovery of an Unregistered Grave Other Than During an Archaeological Excavation. When an unregistered grave is discovered other than during an archaeological excavation subject to regulation by the Agency, all activity that may disturb the unregistered grave shall cease immediately and the coroner shall be notified. Such activity shall not resume unless specifically authorized by the coroner if the coroner maintains jurisdiction or by the Director if the Agency assumes jurisdiction. Subsequent treatment of the human remains will be in accordance with Part 4170 and the Human Skeletal Remains Protection Act [20 ILCS 3440].

c) Discovery of an Unmarked Burial Site or Unregistered Grave During an

I.H.P.A.

NOTICE OF PROPOSED RULES

Archaeological Field Investigation Permitted Under the Act.

1) When an unmarked burial site or unregistered grave is discovered as a result of an archaeological field investigation and the archaeologist finds that the unmarked burial site or unregistered grave represents the burial of an individual who has been dead less than 100 years, the archaeologist shall notify the coroner, and all activity that may disturb the unmarked burial site or unregistered grave shall cease until the coroner authorizes work to resume.

2) If such a unmarked burial site or unregistered grave represents the burial of an individual who has or is presumed to have been dead 100 years or more, the coroner and the Agency Archaeologist shall be notified, and archaeological activities in the burial site area may not resume until the Agency authorizes the work to resume. Subsequent treatment of the human remains, grave artifacts, or grave markers will be in accordance with Part 4170. Notification of Owner of Record of Statutory Requirements.

d) Notification of Owner of Record of Statutory Requirements.

1) If a disturbance or impending disturbance of archaeological or paleontological resources is reported to the Director by a person other than the owner of record, the Director shall notify the owner of record of the site, by telephone or other telecommunications media if possible and by letter with delivery receipt service, of the reported or impending disturbance of the archaeological and paleontological resources, the requirement that a permit be obtained prior to such disturbance and the liabilities and penalties upon the owner of record for any violation of the Act.

2) In instances where the disturbance or impending disturbance of an archaeological or paleontological site for which specific legal boundaries have not been determined is reported to the Director, the Director may require all activity that may disturb the site to cease until the type of resources and specific legal boundaries can be determined in a method approved by the Director. Such activities shall not resume unless specifically authorized by the Director.

**Section 4190.105 Hearings and Appeals**

Hearings and appeals shall be conducted in accordance with standard Agency procedures.

**Section 4190.106 Custody and Curation**

a) Title to Archaeological and Paleontological Resources. Archaeological and paleontological resources excavated or removed from public lands shall remain the property of the State of Illinois. All artifacts, implements and material found or discovered by illegal disturbances or authorized or permitted field investigations, explorations, or



I.H.P.A.

## NOTICE OF PROPOSED RULES

excavations shall be delivered to representatives of the Museum within 30 days after the Agency acceptance of the final report unless arranged otherwise with the Museum.

- b) Archaeological and Paleontological Reports and Field Records. All original field records, notes, photographs and other project documentation shall be deposited at the Museum within 30 days after the Agency acceptance of the final report unless arranged otherwise with the Museum.
- c) Distribution of Artifacts and Materials by the Museum. All collections of artifacts, archaeological materials, paleontological materials, field records, maps, notes, photographs and other information and objects collected may be made available for study under the provisions of Museum policy. The Museum policy manual, "Collections Policy Manual", can be found at the Illinois State Museum's Research and Collection Center Division, 1011 E. Ash Street, Springfield IL 62703.
- d) Distribution of Paleontological Materials, Reports, and Field Records Collected by Employees of the State Geological Survey. The Illinois State Geological Survey of the Illinois Department of Natural Resources is mandated by law to study and report on the geology and mineral resources of Illinois and to distribute to the various educational institutions of the State specimens, samples, and materials. All paleontological materials, reports, original notes, photographs, field records and other information, including that in electronic form, collected from public lands by scientists of the State Geological Survey may be housed and maintained in the collections of the State Geological Survey. The paleontological materials and other scientific information collected from public lands by employees of the State Geological Survey may be made available for study under policies of the Department of Natural Resources.

#### Section 4190.107 Museum Policy on the Scientific Curation, Conservation, and Loan of Archaeological and Paleontological Resources

This Section establishes the policy for the scientific curation, conservation, and loan of archaeological and paleontological resources transferred to the Museum under the provisions of this Part.

- a) Statutory Mandate. The Museum shall collect and preserve objects of scientific and artistic value representing past and present fauna and flora, the life and work of man, geological history, natural resources, manufacturing and fine arts, and to interpret and educate the public concerning these.
- b) Acquisition. The Museum will accept transfer of archaeological and paleontological resources collected by permittees and other sources from public lands as defined in Section 4190.102. A report describing the permit terms and conditions and context of the materials shall be submitted to the Museum at the time of the transfer.
- c) Conservation. All material collected under this Part will be

I.H.P.A.

## NOTICE OF PROPOSED RULES

maintained in appropriate conditions as defined in 36 CFR 79, Curation of Federally-Owned and Administered Archeological Collections.

- d) Loans. All loans of archaeological or paleontological materials collected under this Part will be in keeping with standard Museum policies for the loan of such materials to organizations who meet the standards established by the Museum. The Museum policy manual, "Collections Policy Manual", can be found at the Illinois State Museum's Research and Collection Center Division, 1011 E. Ash Street, Springfield IL 62703.

## SUBPART B: PROHIBITED ACTS; PENALTIES

## Section 4190.201 Prohibited Acts; Notification of Agency

- a) Discovery of Archaeological or Paleontological Resources. Any person who discovers archaeological or paleontological resources or is aware of the illegal disturbance of such protected resources on public lands shall immediately notify the Director.
- b) No Disturbance Permitted. It is unlawful for any person, either by himself or through an agent, to knowingly disturb archaeological or paleontological resources protected by the Act except upon written application made to the Director for a permit therefor and upon the issuance and according to the terms of a permit granted therefor by the Director, or as exempted by Section 4190.103.
- c) No Sale or Other Transfer of Archaeological or Paleontological Resources. It is unlawful for any person, either by himself or through an agent, to sell, purchase, exchange, transport, possess, or receive any archaeological or paleontological resources protected by this Act with the knowledge that they have been collected or excavated in violation of this Act.
- d) Notification of Agency. Persons aware of any violations of this Act should contact the Agency.

## Section 4190.202 Criminal Penalties

- a) Class A Misdemeanor-Violations. Any violation of Section 3 of the Act not involving the disturbance of human skeletal remains is a Class A misdemeanor. A violator is subject to imprisonment for not more than one year and a fine not in excess of \$5,000. Any subsequent violation is a Class 4 felony. Each disturbance that takes place at an archaeological or paleontological site constitutes a separate offense. (See Section 5 of the Act.)
- b) Class 4 Felony-Violations. Any violation of Section 3 of the Act which involves the disturbance of human skeletal remains is a Class 4 felony and the violator shall be subject to imprisonment and a fine. Each disturbance of an unregistered grave, a grave marker or grave artifacts constitutes a separate offense. (See Section 5 of the Act.)

I.H.P.A.

## NOTICE OF PROPOSED RULES

## Section 4190.203 Civil Penalties

a) Authority to Assess Civil Penalty. The Agency may assess a civil penalty against any person who has violated any prohibition contained in the Act, any regulation promulgated by the Agency pursuant to the Act or any term or condition included in a permit.

b) Notice of Violation. The Agency shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested).

The Agency shall include in the notice:

- 1) A concise statement of the facts believed to show a violation;
- 2) A specific reference to the provisions of the Act or permit allegedly violated;

3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

4) Notification of the right to file a petition for relief pursuant to subsection (d) of this Section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

c) Alternatives in Response to Notice of Violations. The person served with a notice of violation shall have 30 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

- 1) Seek informal discussions with the Agency;
- 2) File a petition for relief in accordance with subsection (d) of this Section;
- 3) Take no action and await the Agency's notice of assessment;
- 4) Accept in writing, or by payment of the proposed penalty, any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under subsection (g) of this Section.

d) Petition for Relief. The person served with a notice of violation may request that no penalty be assessed, or that the amount be reduced, by filing a petition for relief with the Agency within 30 calendar days after the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

e) Assessment of Penalty.

- 1) The Agency shall assess a civil penalty upon expiration of the period for filing a petition for relief, or upon completion of informal discussions, whichever is later.

I.H.P.A.

## NOTICE OF PROPOSED RULES

2) The Agency shall take into consideration all available information, including information provided pursuant to subsections (c) and (d) of this Section or furnished upon further request by the Agency.

3) If the facts warrant a conclusion that no violation has occurred, the Agency shall so notify the person served with a notice of violation, and no penalty shall be assessed.

4) Where the facts warrant a conclusion that a violation has occurred, the Agency shall determine a penalty amount in accordance with Section 4190.205 of this Part.

f) Notice of Assessment. The Agency shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Agency shall include in the notice of assessment:

- 1) The facts and conclusions from which it was determined that a violation did occur;
- 2) The basis in Section 4190.205 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and
- 3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

g) Hearings.

1) Except where the right to request a hearing is deemed to have been waived as provided in subsection (c)(4), the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

2) A person served with notice must deliver a written request for a hearing within 30 days after the date of service of the notice of assessment, or shall be deemed to have waived the right to a hearing.

h) Final Administrative Decision.

1) When the person served with a notice of violation has accepted the penalty pursuant to subsection (c)(4) of this Section, the notice of violation shall constitute the final administrative decision;

2) When the person served with a notice of assessment has not filed a timely request for a hearing pursuant to subsection (g)(1) of this Section, the notice of assessment shall constitute the final administrative decision;

3) When the person served with a notice of assessment has filed a timely request for a hearing pursuant to subsection (g)(1) of this Section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the



I.H.P.A.

## NOTICE OF PROPOSED RULES

- i) final administrative decision.  
 Payment of Penalty.

- 1) The person assessed a civil penalty shall have 30 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed.
- 2) Upon failure to pay the penalty, the Agency Director may request the Attorney General to institute a civil action to collect the penalty in a court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Agency is not represented by the Attorney General, a civil action may be initiated by the State's Attorney of the county in which the violation occurred.
- j) Other Remedies Not Waived. Assessment of a penalty under this Section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.
- k) Injunctive Remedy. The Agency may seek injunction or other relief as the Agency deems appropriate for any violation of the Act or this Part.

**Section 4190.204 Civil Damages**

- a) Generally. Persons convicted of a violation of Section 3 of the Act shall also be liable for civil damages to be assessed by the Agency. Civil damages may include:

- 1) forfeiture of any and all equipment used in disturbing the protected archaeological or paleontological resources;
- 2) any and all costs incurred in cleaning, restoring, analyzing, accessioning and curating the recovered materials;
- 3) any and all costs associated with restoring the land to its original contour or the site to its original condition;
- 4) the archaeological or paleontological value, the cost of restoration and repair, and any and all costs associated with recovery of data, and analyzing, publishing, accessioning and curating materials when the prohibited activity is so extensive as to preclude the restoration of the site;
- 5) any and all costs associated with the reinterment of human skeletal remains;
- 6) any and all costs associated with the determination and collection of the civil damages. (See Section 5(a) through (e) of the Act.)
- b) Deposit of Penalty Amounts to Designated Funds. When civil damages are recovered through the Attorney General, the proceeds shall be deposited into the Historic Sites Fund. When civil damages are recovered through the State's Attorney, the proceeds shall be deposited into the county funds designated by the county board. (See Section 5 of the Act.)
- c) Archaeological or Paleontological Value. For purposes of this Part,

I.H.P.A.

## NOTICE OF PROPOSED RULES

the archaeological or paleontological value of any material remains of past human life or activities, human remains, grave artifacts or grave markers, or the material remains of past life or traces involved in a violation of the prohibitions in the Act, this Part or conditions of a permit shall be the value of the information associated with the archaeological or paleontological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

- d) Cost of Restoration and Repair. For purposes of this Part, the cost of restoration and repair of archaeological or paleontological resources, human remains, grave artifacts or grave markers damaged as a result of a violation of prohibitions or conditions pursuant to this Part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

- 1) Reconstruction of the archaeological or paleontological materials, human remains, grave artifacts or grave markers;
- 2) Stabilization and conservation of the archaeological or paleontological materials, human remains, grave artifacts or grave markers;
- 3) Ground contour reconstruction and surface stabilization;
- 4) Research necessary to carry out reconstruction or stabilization;
- 5) Physical barriers or other protective devices necessitated by the disturbance of archaeological or paleontological resources, human remains, grave artifacts or grave markers to protect them from further disturbance;
- 6) Examination and analysis of the archaeological or paleontological resources, human remains, grave artifacts or grave markers, including recording remaining archaeological or paleontological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;
- 7) Reinterment of human remains in accordance with religious or tribal custom and State or local tribal law, where appropriate as determined by the Agency; and
- 8) Preparation of reports relating to any of the above activities.

**Section 4190.205 Penalty Amounts**

- a) Maximum Amounts. The maximum penalty for any misdemeanor violation of Section 3 of the Act is \$5,000 per disturbance. The maximum penalty for any felony violation of Section 3 is \$10,000 per disturbance.
- b) Determination of Penalty Amount, Mitigation, and Remission. The Agency may assess a penalty amount less than the maximum amount of

I.H.P.A.

NOTICE OF PROPOSED RULES

and submerged archaeological sites and paleontological sites with their associated historic, cultural, archaeological, and paleontological resources are not willfully or unnecessarily destroyed or lost, and to preserve information with respect to their location and condition, the Museum and the Agency shall maintain an Illinois Inventory of Archaeological and Paleontological Sites as required in Section 10 of the Act. Such site information shall also be maintained as part of the Illinois Inventory of Burial Sites when the site contains human remains. The Inventory shall indicate the accurate location of each known archaeological or paleontological site.

Section 4190.302 Inventorying of Archaeological and Paleontological Sites

- a) Completing the Inventory Form. The form obtained from the Museum shall contain the following information, to the extent known:
  - 1) The name, address and telephone number of the individual completing the form.
  - 2) Documentation of the site.
  - 3) Photographic prints of the site to document its condition.
  - 4) A town, range and section description and Universal Transverse Meridian coordinates of the site's location, including sufficient buffer land necessary to protect the site until its specific legal boundaries are defined.
  - 5) A sketch showing the known area of the site and any salient observable features.
  - 6) A copy of the pertinent United States Geological Survey 7.5 minute topographic quadrangle map noting the location of the site.
  - 7) References to previous recorded information on the site.
- b) Documentation of a Site. Documentation of a site may include, but is not limited to, the following:
  - 1) Physical evidence, as demonstrated by archaeological, paleontological or written historical reports showing the presence of archaeological or paleontological resources, or human skeletal remains, graves or grave markers;
  - 2) Adequate historical documentation;
  - 3) Oral depositions or affidavits; or
  - 4) Any additional information requested by the Agency.
- c) Entry of Site into the Inventory. If the application is complete and accurate to the best of the cataloger's knowledge, the Museum shall enter the site into the Inventory and assign it a site number. The Museum shall notify the applicant of the site number when a particular site on public lands has been added to the Inventory.

Section 4190.303 Release of Site Information

Following Section 10 of the Act, information contained in the Illinois Inventory of Archaeological and Paleontological Sites may only be released in

I.H.P.A.

NOTICE OF PROPOSED RULES

penalty and may offer to mitigate or remit the penalty.

- 1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:
  - A) Agreement by the person being assessed a civil penalty to return to the State all archaeological or paleontological resources removed;
  - B) Agreement by the person being assessed a civil penalty to assist the Director in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological or paleontological resources in Illinois;
  - C) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act;
  - D) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the Act or regulations promulgated thereunder;
  - E) Determination that the person being assessed a civil penalty did not willfully commit the violation;
  - F) Determination that the proposed penalty would constitute excessive punishment under the circumstances;
  - G) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.
- 2) When the penalty is for a violation which may have had an effect on a known tribal, ethnic or religious site on public lands, the Director should consult with and consider the interest of the affected groups prior to proposing to mitigate or remit the penalty.

Section 4190.206 Rewards

Section 3.2 of the Act provides for rewards of up to \$2,000 to be made to persons who furnish information which leads to arrest and conviction for a criminal violation. The Director may certify to the State Comptroller that a person is eligible to receive payment. Officers and employees of federal, tribal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under Section 4190.205(b)(1)(C), shall not be certified eligible to receive payment of rewards.

SUBPART C: ILLINOIS INVENTORY OF ARCHAEOLOGICAL AND PALEONTOLOGICAL SITES

Section 4190.301 Purpose of Inventory

In order to ensure that the scientific knowledge about prehistoric, historic,



## I.H.P.A.

## NOTICE OF PROPOSED RULES

accordance with the following:

- a) Professional archaeologists or paleontologists may have access to site and location information for their respective fields as needed for their specific project by request to the Agency Archaeologist or the Museum archaeologist responsible for the Inventory.
- b) Governmental bodies may have access to information and location of sites located within lands that they own or manage for the purposes of protecting, preserving and managing those archaeological and paleontological resources or as needed for specific planning or management needs by written request to the Agency Archaeologist or to the Museum archaeologist responsible for the Inventory. These governmental bodies shall not release this information to any other person or organization without the authorization of the Agency.
- c) Release of general information (not including site location and ownership) to the public about archaeological or paleontological resource sites listed in the Illinois Inventory of Archaeological and Paleontological Sites shall generally be available, but the Agency or the Museum shall not release such information when it is believed that such a release may endanger the resource.
- d) Site location information and site ownership (when it would help indicate site location) shall generally not be released.
- e) Release of information under this Section shall be subject to an applicable fee.

SUBPART D: CERTIFICATION OF PROFESSIONAL ARCHAEOLOGISTS AND  
PALEONTOLOGISTS

## Section 4190.401 Purpose

This Subpart establishes minimum standards of education and experience for archaeologists and paleontologists to qualify as professionals for the purpose of conducting activities under the Act and this Part. It is the purpose of this Part to ensure that individuals who have the proper education, training, and experience are engaged in the investigation of the State's limited archaeological and paleontological resources.

## Section 4190.402 Certification Requirements

All supervisory personnel carrying out paleontological activities or archaeological field investigations pursuant to this Part must be certified by the Illinois Historic Preservation Agency.

- a) All field personnel who perform any supervisory archaeological field activities covered under this Part must be certified, at a minimum, as supervisory archaeological field technicians.
- b) Persons responsible for and in charge of historic or prehistoric archaeological field investigations must be certified at the appropriate level as follows:

- 1) at Level I (Survey Supervision) to supervise Phase I initial

## I.H.P.A.

## NOTICE OF PROPOSED RULES

reconnaissance survey and identification-level archaeological field investigations involving pedestrian survey and minimal subsurface testing such as shovel-testing and coring.

- 2) at Level II (Testing Supervision) to supervise Phase II limited archaeological field investigations involving subsurface testing to evaluate the context and significance of archaeological resources.
- 3) at Level III (Mitigation Excavation Supervision) to supervise large-scale field investigations involving mitigation excavations designed to recover maximum archaeological information from total or near total site excavations.
- c) Persons responsible for and in charge of underwater archaeological field activities must meet the requirements to be certified as a professional underwater archaeologist.
- d) Persons responsible for and in charge of historical archaeological field activities must meet the requirements to be certified as a professional historical field archaeologist.
- e) Persons responsible for and in charge of prehistoric archaeological field activities must meet the requirements to be certified as a professional prehistoric field archaeologist.
- f) Persons responsible for and in charge of State agencies' archaeological compliance and research programs must meet the requirements to be certified as a professional archaeologist.
- g) Persons responsible for and in charge of paleontological investigations conducted under this Part must be certified as a professional paleontologist or be a licensed professional geologist under the auspices of the Professional Geologist Licensing Act [225 ILCS 745].

## Section 4190.403 Application Procedures

An individual wishing to apply for certification as a professional archaeologist or paleontologist under this Part shall submit a letter of request indicating the level of certification requested along with appropriate documentation to the Chief Archaeologist, Illinois Historic Preservation Agency, Preservation Services Division, 500 East Madison Street, Springfield IL 62701. Documentation shall be of sufficient detail to demonstrate the applicant fulfills the requirements or the requested certification level and shall include a copy of an official university transcript indicating the applicant's fulfillment of the requirements of the appropriate degree. All applicants for archaeological certification shall submit with their application documentation a signed statement indicating that they shall:

- a) Abide by the Illinois Professional Archaeologists "Code of Ethics" and "Standards of Research Performance" as presented in Subpart E of this Part.
- b) Actively participate in the recording of archaeological resources by submitting new and updated site information to the Illinois Inventory of Archaeological and Paleontological Sites and the Illinois Inventory

I.H.P.A.

## NOTICE OF PROPOSED RULES

of Burial Sites in a timely manner that at a minimum shall be on a biannual basis.

- c) Assist in the protection of archaeological resources by providing information to the Agency on any project or activity on public lands that may endanger such resources.
- d) Not enter into any contractual or other agreement that prevents them from providing information on archaeological or paleontological resources to the Agency.
- e) Provide as part of their application documentation a full disclosure of all overdue archaeological reports, associated site forms, and uncured collections and documentation within the State of Illinois for which the individual has a contractual or legal responsibility to complete and submit. This information shall include the contracting agency/party, project history, report and curation status, and projected plans for completion, including the concurrence of the party for whom the project was done.

#### Section 4190.404 Requirements for Supervisory Archaeological Field Technician Certification

A State certified professional supervisory archaeological field technician must, at a minimum:

- a) have been awarded a bachelor's degree, from an accredited college or university, in archaeology, anthropology, or another germane discipline, and:
  - 1) have 16 weeks of supervised field training in time blocks of at least 4 weeks duration. At least half of this experience must be in field investigation excavation (Phase II or Phase III), and
  - 2) have 8 weeks of supervised laboratory analysis or curation experience, which may be accumulated on a part-time basis; or
- b) have an unrelated bachelor's degree from an accredited college or university and one year of professional archaeological field experience in the Mid-continental Region under the supervision of someone meeting the qualifications of Section 4190.405. At least 4 months of this experience must be in field investigation excavation (Phase II or Phase III).

#### Section 4190.405 Requirements for Supervisory Professional Prehistoric or Historic Field Archaeologist Certification

In addition to meeting the requirements of Section 4190.404, a State certified supervisory professional prehistoric or historic field archaeologist must:

- a) have fulfilled the requirements of either subsection (a)(1) or (a)(2) below:
  - 1) a graduate degree, from an accredited college or university, in archaeology, anthropology, or another germane discipline; or
  - 2) fulfilled the requirements of Section 4190.404 as well as having successfully completed an additional 36 months of professional

I.H.P.A.

## NOTICE OF PROPOSED RULES

field investigation experience, including at least 18 months of field supervisory experience, by December 31, 1999. The individual's 36 months of experience must be within historic archaeology to be certified as a Historic Field Archaeologist or within Mid-continental Region prehistoric archaeology to be certified as a Prehistoric Field Archaeologist.

- b) have designed and executed an archaeological study either in prehistoric or historic archaeology as evidenced by an M.A. or M.S. thesis, Ph.D. dissertation, or a report equivalent in scope and quality. It is recognized that in some cases an individual may have prepared several small reports that, cumulatively, are comparable to an M.A. or M.S. thesis. If the applicant's name does not appear on a document she/he authored, a letter verifying the actual authorship must be solicited and submitted from the person, firm, or agency which issued the report. In any case, the reports must indicate substantive analysis based on an explicitly theoretical orientation. A long but purely descriptive report is not considered equivalent.
- c) have access to facilities and services or be associated with an organization that provides, as appropriate to the scope of the project, the necessary:
  - 1) office space and furniture;
  - 2) laboratory space, furniture, and equipment for analysis of specimens and data;
  - 3) special facilities such as darkroom, drafting facilities, conservation laboratory, etc.;
  - 4) permanent allocation of space, facilities, and equipment for proper maintenance of collections and records located within the State of Illinois;
  - 5) field equipment such as vehicles, surveying instruments, etc.;
  - 6) research library;
  - 7) administrative and fiscal control services;
  - 8) security system;
  - 9) technical specialists such as photographers, curators, conservators, etc.;
  - 10) report production services.
 Individuals or organizations lacking certain facilities or services may satisfy the requirements through cooperative agreements with other organizations. The archaeologist must furnish a letter detailing access to facilities meeting the above conditions, or if associated with an organization, a letter from an authorized organizational official detailing the applicant's association and indicating the organization's commitment to providing the above conditions. Additionally fulfill the requirements of at least one of the following levels:
  - 1) Level I - Phase I Survey Supervision.
    - A) Mid-continental Region archaeological survey experience including 24 weeks of field experience at a supervisory level;
- d)



I.H.P.A.

## NOTICE OF PROPOSED RULES

- B) the completion of archaeological reports, of such supervised Phase I surveys, meeting the standards of the Agency found in "Illinois State Historic Preservation Office Guidelines for Archaeological Reconnaissance Surveys/Reports, Illinois Historic Preservation Agency, 500 E. Madison St., Springfield IL 62701; and
- C) demonstrated experience in Phase I project administration, implementation of cultural resource law/regulations, fiscal management, and successful project and report completion.
- 2) Level II - Phase II Testing Excavation Supervision.
- A) Mid-continental Region historic or prehistoric archaeological excavation experience including 24 weeks of field experience at a supervisory level;
- B) the completion of archaeological reports, of such supervised Phase II testing excavations, meeting the standards of the Agency found in "Illinois State Historic Preservation Office Guidelines for Archaeological Reconnaissance Surveys/Reports, Illinois Historic Preservation Agency, 500 E. Madison St., Springfield IL 62701; and
- C) demonstrated experience in Phase II project administration, implementation of cultural resource law/regulations, fiscal management, and successful project and report completion.
- 3) Level III - Phase III Mitigation Excavation Supervision. Meet Level II requirements, plus:
- A) an additional 24 weeks of supervisory-level excavation experience;
- B) the past successful completion of comparable-level archaeological Phase III excavation reports meeting the standards of the Agency found in "Illinois State Historic Preservation Office Guidelines for Archaeological Reconnaissance Surveys/Reports, Illinois Historic Preservation Agency, 500 E. Madison St., Springfield IL 62701; and
- C) demonstrated experience in Phase III project administration, implementation of cultural resource law/regulations, fiscal management, and successful project and report completion.

#### Section 4190.406 Requirements for Certified Professional Underwater Archaeologist

At a minimum, a State certified professional underwater archaeologist must:

- a) Fulfill the requirements for a certified supervisory archaeological field technician.
- b) Have one year of relevant North American freshwater lake and river underwater field and related laboratory experience including at least two weeks of underwater survey techniques, 24 weeks of supervised underwater fieldwork, 20 weeks of supervisory underwater archaeological fieldwork, 8 weeks supervised training in the

I.H.P.A.

## NOTICE OF PROPOSED RULES

application of stabilization and conservation methods as they pertain to waterlogged materials, and the design and execution of an underwater archaeological study.

- c) Have one year of experience in the operation of remote sensing devices in an underwater environment for the purposes of discovery and evaluation of archaeological resources. Six months of this time must be supervised by a specialist in the use of underwater remote sensing devices.
- d) Provide documentation demonstrating diving competency (including current certification by a recognized national diving organization).
- e) Demonstrate, through fieldwork and reports, knowledge of both archaeological and archival data pertaining to historic watercraft and shipping on North American lakes and rivers.

#### Section 4190.407 Requirements for a Certified Professional Paleontologist

At a minimum, a State certified professional paleontologist must be a licensed professional geologist under the auspices of the Professional Geologist Licensing Act [225 ILCS 745] or:

- a) have been awarded a graduate degree, from an accredited organization, in paleontology, geology, biology or another germane discipline with a specialization in paleontology.
- b) have designed and executed a paleontological study as evidenced by an M.A. or M.S. thesis, Ph.D. dissertation, or a report equivalent in scope and quality. It is recognized that in some cases an individual may have prepared several small reports that, cumulatively, are comparable to an M.A. or M.S. thesis. If the applicant's name does not appear on a document that a person authored, a letter verifying the actual authorship must be solicited and submitted from the person, firm, or agency that issued the report. In any case the reports must indicate that the person has the ability to conduct the field work with appropriate methods and complete the report as outlined in this Section.
- c) have access to facilities and services or be associated with an organization that provides, as appropriate to the scope of the project, the necessary:
  - 1) office space and furniture;
  - 2) laboratory space, furniture, and equipment for analysis of specimens and data;
  - 3) special facilities such as darkroom, drafting facilities, conservation laboratory, etc.;
  - 4) permanent allocation of space, facilities, and equipment for proper maintenance of collections and records located within the State of Illinois;
  - 5) field equipment such as vehicles, surveying instruments, etc.;
  - 6) research library;
  - 7) administrative and fiscal control services;
  - 8) security system;

I.H.P.A.

## NOTICE OF PROPOSED RULES

- 9) technical specialists such as photographers, curators, conservators, etc.; and
  - 10) report production services.
- Individuals or organizations lacking certain facilities or services may satisfy these requirements through cooperative agreements with other organizations. The paleontologist must furnish a letter detailing access to facilities meeting the requirements of this subsection (c), or if associated with an organization, a letter from an authorized organizational official detailing the applicant's association and indicating the organization's commitment to meeting the requirements of this subsection (c).

**Section 4190.408 Certification Approval**

Upon receipt of an application for certification as a professional archaeologist, the Agency Archaeologist shall review the information provided and within 30 days after the application receipt make a written recommendation to the Director regarding the approval or denial of the application. Upon receipt of an application for certification as a professional paleontologist, the Agency Archaeologist shall forward the application to the Museum for review. Within 30 days after the application receipt the Museum shall make a written recommendation to the Director regarding the approval or denial of the application. Applicants for certification as professional archaeologists or paleontologists shall be approved at the appropriate level if the Director finds the applicant has provided sufficient documentation and meets the qualifications for certification.

**Section 4190.409 Denial of Certification**

Applicants for certification as professional archaeologists or paleontologists shall be denied if the Director, upon the written recommendation of the Agency Archaeologist in the case of an archaeologist or the Museum in the case of a paleontologist, finds that the applicant has provided insufficient documentation, has willfully misrepresented facts, or does not meet the minimum standards for certification.

**Section 4190.410 Suspension or Revocation of Certification**

Certification shall be suspended or revoked if the Director finds that a certified professional archaeologist or paleontologist:

- a) has willfully misrepresented facts in the application documentation.
- b) has not satisfactorily complied with conditions of permits issued under the Act or under the Human Skeletal Remains Protection Act.
- c) has not satisfactorily complied with conditions of archaeological scopes-of-work or data recovery plans reviewed and approved by the Agency pursuant to the Illinois State Agency Historic Resources Preservation Act or the National Historic Preservation Act.
- e) has not satisfactorily participated in reporting sites to the Illinois

I.H.P.A.

## NOTICE OF PROPOSED RULES

Inventory of Archaeological and Paleontological Sites or the Illinois Inventory of Burial Sites.

- f) has demonstrated a consistent pattern of incompetence in the performance of field investigations, analysis and/or the completion of required reports indicating the inability to perform the responsibilities of a certified professional. A documented history of incompetence must be demonstrated by the Agency prior to taking action to suspend or revoke any level of certification.
- g) has demonstrated a consistent pattern of not complying with the stipulations in Subpart E of this Part. A documented history of noncompliance must be demonstrated by the Agency prior to taking action to suspend or revoke any level of certification.
- h) has willfully engaged in actions that are harmful to protected archaeological or paleontological resources.
- i) has not maintained a fieldwork environment that is safe to crew, land-management staff, and the public. To ensure that the highest professional standards are followed the Agency shall maintain a record on the professional activities of all certified archaeologists and human skeletal analysts, and the Museum shall maintain a record of the professional activities of all certified paleontologists. This record shall include copies of current resumes, all correspondence related to an individual's professional competence, ethical activities, and other matters relevant to this Part.

**Section 4190.501 Hearings and Appeals**

Hearings and appeals shall be conducted in accordance with standard Agency procedures.

SUBPART E: ILLINOIS PROFESSIONAL ARCHAEOLOGISTS' CODE OF ETHICS AND STANDARDS OF RESEARCH PERFORMANCE

**Section 4190.601 Purpose**

The archaeological resources of Illinois are an important and irreplaceable part of the State's heritage and identity. The State has a responsibility to ensure that only those individuals with appropriate regional training and expertise and the highest professional standards be engaged in the recovery, investigation, and analysis of such resources. Archaeology is a professional and the privilege of professional practice in Illinois requires professional ethics and professional responsibility, as well as professional competence, on the part of each practitioner.

**Section 4190.602 Code of Ethics**

- a) Individuals certified under this Part as Illinois Professional Archaeologists shall:
  - 1) Recognize that the archaeological resource base and the knowledge



I.H.P.A.

## NOTICE OF PROPOSED RULES

- gained from it belongs to, and is held in trust for, all peoples;
- 2) Recognize a commitment to represent archaeology and its research results to the public in a responsible manner;
  - 3) Actively support conservation of the archaeological resource base;
  - 4) Be sensitive to, and respect the legitimate concerns of, groups whose culture histories are the subject of archaeological investigations;
  - 5) Avoid and discourage exaggerated, misleading, or unwarranted statements about archaeological matters that might induce others to engage in unethical or illegal activities;
  - 6) Support and comply with the terms of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property, as adopted by the General Conference, 14 November 1970, Paris;
  - 7) Give appropriate credit for work done by others;
  - 8) Stay informed and knowledgeable about developments in one's field of specialization;
  - 9) Accurately, and without undue delay, prepare and properly disseminate a description of research done and its results;
  - 10) Communicate and cooperate with colleagues having common professional interests;
  - 11) Know and comply with all federal, State, and local laws, ordinances, and regulations applicable to his or her archaeological research and activities within the State of Illinois;
  - 12) Report knowledge of all violations of this Part to the proper authorities;
  - 13) Refuse to comply with any request or demand of an employer or client that conflicts with this Part.
- b) Individuals certified under this Part as Illinois Professionals:
- Archaeologists shall not:
- 1) Engage in any illegal or unethical conduct involving archaeological matters or knowingly permit the use of their names in support of any illegal or unethical activities involving archaeological matters;
  - 2) Give a professional opinion, make a public report, or give legal testimony involving archaeological matters without being appropriately informed concerning the topic;
  - 3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation about archaeological matters;
  - 4) Undertake any research that affects the archaeological resource base for which they are not qualified;
  - 5) Falsely or maliciously attempt to injure the reputation of another archaeologist;
  - 6) Commit plagiarism in oral or written communication;
  - 7) Refuse a reasonable request from a qualified colleague for research data;

I.H.P.A.

## NOTICE OF PROPOSED RULES

- 8) Participate in any actions that are in violation of this Part.

**Section 4190.603 Standards of Research Performance**

A certified Illinois professional archaeologist has the responsibility to design and conduct projects that will add to the understanding of past cultures and/or that will develop better theories, methods, or techniques for interpreting the archaeological record, while causing minimal attrition of the archaeological resource base. In the conduct of that research the following minimal standards shall be followed:

- a) The archaeologist has a responsibility to prepare adequately for any project in which he or she is involved. Archaeologists must:
  - 1) Assess the adequacy of their qualifications for the demands of the project and minimize inadequacies by acquiring additional expertise, by bringing in associates with needed qualifications, or by modifying the scope of the project;
  - 2) Inform themselves of relevant previous research, records, and documents;
  - 3) Develop a scientific plan of research that specifies the objectives of the project, takes into account previous relevant research, employs a suitable methodology, and provides for economical use of the resource base consistent with the objectives of the project;
  - 4) Ensure the availability of adequate and competent staff and support facilities to carry the project to completion and of adequate curatorial facilities for specimens and records;
  - 5) Comply with all legal requirements, including, without limitation, obtaining all necessary governmental permits and necessary permission from landowners and other persons as required by law.
- b) In conducting projects, the archaeologist must follow the scientific plan of research, except to the extent that unforeseen circumstances warrant its modification.
- c) Procedures for field survey or excavation must meet the following minimum standards:
  - 1) Maintain a system for identifying and recording the provenience for all collected specimens.
  - 2) Uncollected entities such as environmental or cultural features, depositional strata, and the like, must be fully and accurately recorded by appropriate means, and their location recorded.
  - 3) The methods employed in data collection must be fully and accurately described. Significant stratigraphic and/or associational relationships among artifacts, other specimens, and cultural and environmental features must also be fully and accurately recorded.
  - 4) All records should be intelligible to other archaeologists. If terms lacking commonly held referents are used they should be clearly defined.

I.H.P.A.

## NOTICE OF PROPOSED RULES

- 5) Insofar as possible, the interests of other researchers should be considered.
- d) During accessioning, analysis, and storage of specimens and records in the laboratory the archaeologist must take precautions to ensure that correlations between specimens and field records are maintained so the provenience, contextual relationships and the like are not confused or obscured.
- e) Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities. All specimens and research records collected from projects conducted on public lands under this Part shall be deposited in the Illinois State Museum.
- f) The archaeologist has responsibility for appropriate dissemination of the results of research to the appropriate constituencies with reasonable dispatch. Results reviewed as contributions to substantive knowledge of the past or to advancements in theory, method or technique shall be disseminated by appropriate means such as a full descriptive report or comparable publications to ensure that the basic data is available to interested parties.

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

- 1) Heading of the Part: Early Intervention Program

- 2) Code Citation: 59 Ill. Adm. Code 121

- 3) Section Number: 121.45  
Proposed Action:  
Amended

- 4) Statutory Authority: Implementing and authorized by Section 9 of the Early Intervention Services System Act [325 ILCS 20/9].

- 5) A Complete Description of the Subjects and Issues Involved: Part 121 is being amended to require agencies with early intervention programs in accordance with the Early Intervention Act [325 ILCS 20] and this Part to report suspected incidents of abuse or neglect against individuals in these programs to the appropriate law enforcement agencies and the Department of Children and Family Services in accordance with the Abused and Neglected Children Reporting Act [325 ILCS 5].

The Department realized the need for this rulemaking during the development of its rules on the investigations of alleged abuse or neglect and deaths in State-operated and community agency facilities. These rules (59 Ill. Adm. Code 50) will be proposed in the near future.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed amendment contain incorporation by reference? No

- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	IL Register Citation
121.30	Amended	21 Ill. Reg. 1506
121.66	New Section	21 Ill. Reg. 1506

- 10) Statement of Statewide Policy Objectives: This rulemaking does not impact the State Mandates Act [30 ILCS 805].

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested person may submit comments, data, views or argument regarding this proposed rulemaking before the expiration of the first 45-day notice period. Submissions must be in writing and directed to:

Judith Hollenberg  
Rules Administrator  
Department of Mental Health



## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

and Developmental Disabilities  
401 Stratton Building  
Springfield IL 62765  
217/785-3313  
FAX 217/524-8920

12) Initial Regulatory Flexibility Analysis:

- A) Types of small business affected: Community providers of early intervention programs.
- B) Reporting, bookkeeping or other procedures required for compliance: Agencies are required to report unusual incidents, as identified in this Part, to the appropriate law enforcement agencies and to the Department of Children and Family Services. No financial reporting is required.

- C) Types of professional skills necessary for compliance: No special skills needed.

- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized on either of the two most recent regulatory agendas because: the Department did not anticipate that it would be proposing this rulemaking at the time either agenda was prepared.

The full text of the Proposed Amendment(s) begins on the next page.

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

TITLE 59: MENTAL HEALTH  
CHAPTER I: DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
PART 121  
EARLY INTERVENTION PROGRAM

## SUBPART A: GENERAL PROVISIONS

Section	Purpose
121.10	Incorporation by reference
121.15	Early intervention service principles
121.20	Child and family rights and confidentiality
121.25	Definitions
121.30	

## SUBPART B: PROVIDER REQUIREMENTS

Section	
121.35	General requirements
121.40	Environmental management
121.45	Administrative requirements
121.50	Personnel requirements
121.55	Recordkeeping
121.60	Program evaluation
121.65	Utilization review

## SUBPART C: OPERATIONAL PROCEDURE AND SERVICES

Section	
121.70	Time frame for completion of process
121.75	Screening and social history
121.80	Assessment
121.85	Eligibility, notice requirements and time frames for compliance
121.90	Individualized family service plan (IFSP) development and modification
121.95	Transdisciplinary or interdisciplinary team
121.100	Early intervention services
121.105	Discharge
121.110	Exit criteria
121.115	Transition process

## SUBPART D: HEARINGS AND APPEALS

Section	
121.120	Representation
121.125	Notice
121.130	Pre-hearing conference
121.135	Conduct of hearings

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

121.140 Hearing officer's decision  
 121.145 Appeal to the Director  
 APPENDIX A Utilization Guidelines

AUTHORITY: Implementing and authorized by Section 9 of the Early Intervention Services System Act [325 ILCS 20/9].

SOURCE: Adopted at 17 Ill. Reg. 4261, effective March 23, 1993; amended at 18 Ill. Reg. 15587, effective October 5, 1994; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: PROVIDER REQUIREMENTS

## Section 121.45 Administrative requirements

- a) Each provider shall establish a mechanism to obtain input from parents of and advocates for children receiving early intervention services from the provider. The provider shall either establish an advisory committee that reports recommendations directly to the government body or have consumer representatives on the governing body. If the advisory committee is the mechanism used, it shall include parents of and advocates for children receiving early intervention services from the provider.
- b) Each provider shall adhere to current Illinois statutes regarding conflict of interest and adopt a written policy concerning conflict of interest.
- c) Staff and volunteer training
  - 1) Staff training in principles and practices shall be provided to direct service and professional staff, and shall include but not be limited to, the following area:
    - A) Cardiopulmonary resuscitation (CPR), Heimlich maneuver and first aid;
    - B) Proper handling and positioning of infants and toddlers;
    - C) Concepts on age and cultural appropriateness, normal/abnormal child development, and other developmental services depending on the needs of the child and family served or to be served;
    - D) Safety, fire, and disaster procedures including:
      - i) Use of fire-fighting equipment; and
      - ii) Familiarity with the disaster preparedness plan.
    - E) Responsibilities under the Abused and Neglected Child Reporting Act to report suspected abuse and neglect;
    - F) Prevention, handling and reporting of unusual incidents (e.g., injury of child, parent appearing at site who is under restraining order);
    - G) Individual rights according to Chapter 2 of the Code and maintaining confidentiality according to the Confidentiality Act;

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

- H) The nature, structure and monitoring of the IFSP;
- I) Infection control and sanitation;
- J) Food preparation and handling for staff who prepare and serve food to children; and
- K) The type, dosage, characteristics and side effects of medications prescribed for children receiving services.
- 2) The provider shall ensure that volunteers are trained appropriately prior to their working with children and families. For volunteers working directly with children, training shall include areas discussed in subsections (C)(1)(A), (4)(B), (4)(C), (4)(D) and (4)(E) of this Section **above** and in other subsections as necessary.
- d) Child and family records
  - 1) The parent or parent substitute shall give informed consent to participate in the services specified in the individualized family service plan, that shall be documented in the child and family's record.
  - 2) The program shall ensure the confidentiality of the child and family's records according to the Confidentiality Act and shall ensure safekeeping of all records against theft, loss or destruction. Upon request, families which are currently receiving services shall have access within one day to the child and family's records and three days to obtain a copy. A family that has applied and been denied services shall also have access to the records.
  - 3) The program shall maintain a chronological record for each child and family which documents services and supports provided. A complete set of records shall be located at one site, designated by the program, which is accessible and convenient to staff and the parent or parent substitute contributing to the plan.
  - 4) Specific information shall be obtained, recorded and updated as necessary. The child and family's record shall be maintained with periodically updated background information to ensure a comprehensive view of the child's development.
  - 5) The child and family's record shall contain all prior service and assessment information during the period of service.
  - 6) The child and family's financial record shall include the financial status of the child and family at service initiation, with an annual update.
- e) Fiscal and statistical requirements
  - 1) A provider shall not charge children and families who are at or below 185 percent of the federal poverty level, after all allowable deductions, for any early intervention services.
  - 2) For children and families who are above 185 percent of the federal poverty level, a provider shall comply with the following:
    - A) The provider shall establish a sliding fee scale for services based on the parent or parent substitute's ability



## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

to pay, after all allowable deductions. Consideration shall also be given to the additional costs normally associated with caring for a child with a disability.

- B) A sliding fee scale shall be established for the following services:
- i) Developmental services;
  - ii) Occupational therapy;
  - iii) Physical therapy;
  - iv) Psychological services;
  - v) Speech therapy; and
  - vi) Transportation.
- C) The parent or parent substitute may elect to have his or her insurance billed for the cost of services in lieu of paying the fees directly.
- D) Children and families shall not be charged for the following services:
- i) Screening;
  - ii) Social history;
  - iii) Assessment;
  - iv) IFSP development, review and modification; and
  - v) Service facilitation.
- E) No one shall be denied services based on an inability to pay.
- F) If the provider accepts the Medicaid reimbursement rate for a service, the provider cannot charge a child or family any additional amount. The Medicaid reimbursement rate for a service is derived pursuant to the Department's rule at 59 Ill. Adm. Code 122.70.

- 3) A provider shall report services rendered under the early intervention program to the Department in the manner required by the Department. These reports shall include the following:

- A) Each type of service provided to each child or family, including the date of service and the number of units provided.
- B) The provider shall keep and make available such hard copy records and source documents associated with each submitted service report as necessary to disclose fully the nature and extent of services reported therein.

## f) Unusual incidents

- 1) The provider shall have written policies and procedures for handling, investigating, reporting, tracking and analyzing unusual incidents through the provider's management structure, up to and including the authorized agency representative. The provider shall ensure that staff demonstrate their knowledge of, and follow such policies and procedures that shall include but are not limited to, the following:

- A) Sexual assault;
- B) Abuse or neglect;

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

- C) Death;
- D) Physical injury;
- E) Assault;
- F) Missing persons;
- G) Theft; and
- H) Criminal conduct.

- 2) Within 24 hours after an occurrence the agency shall report any incident that is subject to the Criminal Code of 1961 [720 ILCS 5] to the appropriate law enforcement agencies.

- 3) The provider shall ensure that suspected instances of abuse or neglect against individuals in early intervention programs are reported to the Department of Children and Family Services according to the requirements of the Abused and Neglected Child Reporting Act [325 ILCS 5].

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Minimum Standards for Certification of Developmental Training Programs
- 2) Code Citation: 59 Ill. Adm. Code 119
- 3) Section Numbers: 119.260  
Proposed Action: Amended
- 4) Statutory Authority: Implementing and authorized by Section 15.2 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/15.2].
- 5) A Complete Description of the Subjects and Issues Involved: Part 119 is being amended to require agencies with developmental training programs certified under this Part to report suspected incidents of abuse or neglect against individuals in these programs to the Office of Inspector General (Section 6.2 of the Abused and Neglected Long Term Care Facility Residents Reporting Act [210 ILCS 30/6.2]).  
  
The Department realized the need for this rulemaking during the development of its rules on the investigations of alleged abuse or neglect and deaths in State-operated and community agency facilities. These rules (59 Ill. Adm. Code 50) will be proposed in the near future.
- 6) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed rulemakings pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
119.120	Amended	21 Ill. Reg. 1532
119.210	Amended	21 Ill. Reg. 1532
119.270	Amended	21 Ill. Reg. 1532
119.305	Amended	21 Ill. Reg. 1532

- 10) Statement of Statewide Policy Objectives: This rulemaking does not impact the State Mandates Act [30 ILCS 805].

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested person may submit comments, data, views or argument regarding this proposed rulemaking before the expiration of the first 45-days period. Submissions must be in writing and directed

DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT

to:

Judith Hollenberg  
Rules Administrator  
Department of Mental Health  
and Developmental Disabilities  
401 Stratton Building  
Springfield, IL 62765  
(217)785-3313  
FAX: (217)524-8920

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Private agencies that operate developmental training programs certified by the Department.
- B) Reporting, bookkeeping or other procedures required for compliance: Agencies are required to report unusual incidents, as identified in this Part, to the appropriate law enforcement agencies and to the Office of Inspector General. No financial reporting is required.
- C) Types of professional skills necessary for compliance: No special skills needed.

- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized on either of the two most recent regulatory agendas because: The Department did not anticipate that it would be proposing this rulemaking at the time either agenda was prepared.

The full text of the Proposed Amendment begins on the next page:



DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT

TITLE 59: MENTAL HEALTH  
CHAPTER I: DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

PART 119

MINIMUM STANDARDS FOR CERTIFICATION OF DEVELOPMENTAL TRAINING PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section

119.100 Applicability  
119.110 Incorporation by reference  
119.120 Definitions

SUBPART B: PROGRAM REQUIREMENTS

Section

119.200 General requirements  
119.205 Criteria for participation of individuals  
119.210 Exclusion, suspension or discharge of an individual  
119.215 Program staff  
119.220 Interdisciplinary team (team)  
119.225 Assessment of individuals  
119.230 Individual services plan (plan)  
119.235 Individual rights and confidentiality  
119.240 Special training procedures  
119.245 Committees  
119.250 Medications and medical care  
119.255 Environmental management  
119.260 Administrative requirements  
119.261 Application for waiver of the prohibition against employment

SUBPART C: CERTIFICATION REQUIREMENTS

Section

119.300 Issuing a certificate and period of certification  
119.305 Application for certification  
119.310 Application acceptance and verification  
119.315 Non-transferability of a certificate  
119.320 Cessation of operations  
119.325 Certificate denial  
119.330 Hearings

**AUTHORITY:** Implementing Section 15.2 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/15.2] and the Health Care Worker Background Check Act [225 ILCS 46] and authorized by Section 15.2 of the Department of Mental Health and Disabilities Act [20 ILCS 1705/15.2].

DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT

**SOURCE:** Adopted at 14 Ill. Reg. 17227, effective October 9, 1990; emergency amendment at 16 Ill. Reg. 2662, effective February 1, 1992, for a maximum of 150 days; emergency expired June 30, 1992; amended at 21 Ill. Reg. 2195, effective February 1, 1997; amended at 21 Ill. Reg. 6067, effective May 5, 1997; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: PROGRAM REQUIREMENTS

Section 119.260 Administrative requirements

a) Governing body

1) Each program which is owned or operated by any corporation, association, or unit of local government shall have a governing body in which is vested authority and responsibility for the organization, management, control and operation of the program in compliance with the General Not For Profit Corporation Act of 1986 [805 ILCS 105] ~~(((11-Rev--Stat--1989--ch--32--par--181--et seq--))~~, and with the Department's rules at 59 Ill. Adm. Code 103 (Grants).

2) The names and addresses of all owners or controlling parties (whether they are sole proprietorship, association, partnership, corporation, or subdivisions of other bodies, such as public agencies or religious, fraternal or other charitable organizations) shall be fully disclosed and provided to the Department annually. For corporations, the names and addresses of all officers, directors, and principal stockholders, either beneficial or of record, shall be disclosed.

3) The governing body shall include persons who have no direct or indirect financial interest in the program and who reside in the geographic area served by the program and include persons with developmental disabilities and consumer representatives.

4) The provider shall notify the governing body of the Department's annual survey and other State ~~state~~ and local inspections which indicate the outcome and disposition of any findings resulting from a survey.

b) Advisory board

1) A program which is owned or operated by a sole proprietor or partnership shall appoint and maintain an advisory board whose members shall be persons who have no direct or indirect financial interest in the program, and who reside in the geographic area served by the program, and who include persons with developmental disabilities and consumer representatives.

2) The advisory board shall ensure that each program owned or operated by a sole proprietor or partnership shall have a charter, mission statement, goals and objectives.

c) Authorized agency representative

The provider shall appoint an authorized agency representative whose

DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT

qualifications and duties are defined in writing and include authority for program administration and management. His or her performance shall be reviewed and documented annually by the governing body.

## d) Provider policy requirements

- 1) The program shall have written policies which shall be reviewed annually, revised as necessary and approved by the governing body or advisory board and shall describe:
  - A) Goals and objectives reflecting annual and long-range plans;
  - B) The population served, including age groups, disabilities and the geographic service area;
  - C) The services provided in response to individual and community needs including:
    - i) The hours and days of operation;
    - ii) The methods used to perform initial screening and assessment of individuals;
    - iii) A description of processes used for development of the services plan;
  - iv) The use and approval of special training procedures such as time-out, restraint and aversive techniques;
  - v) Handling emergencies and disasters; and
  - vi) Maintenance of buildings, vehicles and equipment.
- 2) Program policy shall ensure the availability of professional, administrative and support staff to assess and address the needs of individuals. This includes personnel and consultants who can communicate, either verbally or non-verbally, with individuals.
- 3) Program policy shall ensure that Department-authorized consumer-interest groups shall be permitted, with the consent of the individuals, to visit a program.
  - A) Consumer interest groups must request authorization in writing to visit specific programs. The request shall be made to the Department and shall specify the program to be visited and the reason for the group's proposed visit. If the group agrees to the conditions set out below, the request shall contain those agreements.
    - B) The Department shall authorize a group to visit a program for a period of one year if:
      - i) The group has as one of its organizational purposes to review public services for mentally disabled individuals;
      - ii) The group agrees that its visits will not interfere with the program; and
      - iii) The group agrees to abide by the provisions of the Act concerning records and communications of individuals in programs.
  - C) The Department shall revoke its authorization or not renew the authorization if it has information that the group has not abided by the conditions set out above.

DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT

- D) Any group whose authorization has been denied, revoked or not renewed may appeal the decision in writing to the Director, who shall review the decision and accept or reverse it within 30 days. The Director shall uphold the decision if he or she finds that the group has not abided by this Part.

## e) Personnel requirements

- 1) Programs shall not discriminate in the hiring or employment of staff on the basis of race, color, age, national origin, sex, religion, or handicap.
- 2) Personnel policies and procedures shall be in writing and available for review.
- 3) The program shall have written job descriptions or contractual agreements for every position, including consultant and direct-service volunteer positions, which list the job title, duties and responsibilities, minimum experience and educational requirements, immediate supervisor and subordinates.
- 4) Staff shall be licensed, registered or certified by the State, if required.
- 5) When paraprofessional or untrained staff are used in direct services, they shall be supervised by professional staff.
- 6) A pay plan for all position titles in used shall be available for review by the Department.
- f) Staff and volunteer training
  - 1) Training in principles and practices in the following areas shall be provided to direct service and professional staff:
    - A) Cardiopulmonary resuscitation (CPR), Heimlich maneuver and first aid;
    - B) Behavior management;
    - C) Normalization;
    - D) Age and cultural appropriateness;
    - E) Safety, fire, and disaster procedures including:
      - i) Use of fire-fighting equipment; and
      - ii) Familiarity with the disaster preparedness plan.
    - F) Prevention, handling, and reporting of abuse, neglect, exploitation, unusual incidents (see subsection (h) of this Section below);
    - G) Individual rights in accordance with Chapter 2 of the Code and maintaining confidentiality in accordance with the Act;
    - H) Team planning;
    - I) Infection control and sanitation; and
    - J) Food prevention and handling for staff who prepare and serve food to individuals.
  - 2) Training for volunteers working directly with individuals shall be provided in the areas discussed in subsections (f)(1)(A), (f)(B), (f)(F) and (f)(G) of this Section above. The agency shall provide a training program for other volunteers.





DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT

- 4) The following shall be entered in the individual's record during the period of service;
- A) Prior service history;
  - B) Initial assessments and plan and the most recent assessments and plan;
  - C) Documentation of approval and their results when special training procedures are used such as time-out, restraint and adverse procedures; and
  - D) Chronological progress notes, at least monthly, documenting the individual's involvement in and response to the plan.
- j) Financial and operational requirements  
Programs shall comply with 59 Ill. Adm. Code 103 (Grants).

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

- 1) Heading of the Part: Minimum Standards for Licensure of Community Residential Alternatives

2) Code Citation: 59 Ill. Adm. Code 113

3) Section Number: Proposed Action:  
113.50 Amended  
113.140 Repealed

- 4) Statutory Authority: Implementing and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104], Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5] and Section 5 of the Community Residential Alternatives Licensing Act [210 ILCS 140/5].

- 5) A Complete Description of the Subjects and Issues Involved: Part 113 is being amended to require agencies with programs licensed under the Community Residential Alternatives Licensing Act [210 ILCS 140/5] and this Part to report suspected incidents of abuse or neglect against individuals in these programs to the Office of Inspector General (Section 6.2 of the Abused and Neglected Long Term Care Facility Residents Reporting Act [210 ILCS 30/6.2]).

The Department realized the need for this rulemaking during the development of its rules on the investigations of alleged abuse or neglect and deaths in State-operated and community agency facilities. These rules (59 Ill. Adm. Code 50) will be proposed in the near future.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed amendment contain incorporation by reference? No

- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	IL Register Citation
113.10	Amended	21 Ill. Reg. 1545
113.55	Amended	21 Ill. Reg. 1545

- 10) Statement of Statewide Policy Objectives: This rulemaking does not impact the State Mandates Act [30 ILCS 805].

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested person may submit comments, data, views or argument regarding this proposed rulemaking before the expiration of the first 45-day notice period. Submissions must be in writing and



## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

## directed to:

Judith Hollenberg  
 Rules Administrator  
 Department of Mental Health and Developmental Disabilities  
 401 Stratton Building  
 Springfield IL 62765  
 217/785-3313  
 FAX 217/524-8920

## 12) Initial Regulatory Flexibility Analysis:

- A) Types of small business affected: Private agencies that operate community residential alternatives licensed by the Department.
- B) Reporting, bookkeeping or other procedures required for compliance: Agencies are required to report unusual incidents, as identified in this Part, to the appropriate law enforcement agencies and to the Office of Inspector General. No financial reporting is required.
- C) Types of professional skills necessary for compliance: No special skills needed.
- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized on either of the two most recent regulatory agendas because: the Department did not anticipate that it would be proposing this rulemaking at the time either agenda was prepared.

The full text of the Proposed Amendment(s) begins on the next page.

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

TITLE 59: MENTAL HEALTH  
 CHAPTER I: DEPARTMENT OF MENTAL HEALTH  
 AND DEVELOPMENTAL DISABILITIES

PART 113  
 MINIMUM STANDARDS FOR LICENSURE OF  
 COMMUNITY RESIDENTIAL ALTERNATIVES

Section	Definitions
113.10	Incorporation by reference
113.15	Application for license
113.20	Complaint procedures
113.30	Departmental inspections
113.40	Monitoring and evaluation
113.45	Administrative policies and practices
113.50	Application for waiver of the prohibition against employment
113.51	Accreditation
113.55	Personnel and staffing policies
113.60	Site, physical plant standards
113.70	Physical plant services
113.80	Food and nutrition services
113.90	Admission/discharge
113.100	Resident rights
113.110	Resident records
113.120	Resident living program
113.130	Unusual occurrences (Repealed)
113.140	

**AUTHORITY:** Implementing the Community Residential Alternatives Licensing Act [210 ILCS 140] and the Health Care Worker Background Check Act [225 ILCS 46] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104], Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5] and Section 5 of the Community Residential Alternatives Licensing Act [210 ILCS 140/5].

**SOURCE:** Emergency rule adopted and codified at 6 Ill. Reg. 7239, effective June 8, 1982, for a maximum of 150 days; emergency expired November 5, 1982; adopted at 7 Ill. Reg. 1054, effective January 19, 1983; amended at 17 Ill. Reg. 21387, effective November 29, 1993; amended at 21 Ill. Reg. 2200, effective February 1, 1997; amended at 21 Ill. Reg. 6076, effective May 5, 1997; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 113.50 Administrative policies and practices

## a) Governing body

- 1) Each agency which is owned or operated by any corporation, association, or unit of local government shall have a governing

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

body in which is vested authority and responsibility for the organization, management, control, and operation of the agency and all programs, services, facilities and residences it administers.

- 2) Each agency shall have provisions for obtaining input from consumers and/or consumer representatives to the governing body.

- b) General program requirements  
Agencies funded by the Department shall meet the following general program requirements for all funded services:

- 1) Service setting  
Services shall be provided in the setting most appropriate to the needs of the individual. This may include the individual's home, the agency, or the community. All settings shall be used innovatively in order to reach the target populations.

- 2) Recordkeeping

- A) Cumulative case records including an individualized service plan shall be maintained for each individual.

- B) The individualized service plan shall state the goal(s) for each individual. The individual shall be afforded the opportunity and encouraged to participate in goal/objective selection. Goals/objectives shall include timeframes specified by the agency's professional staff, in consultation with the individual and relevant collaterals. "Individualized service plan", as used herein, refers to and is equivalent to "individual treatment plan" and "individual habilitation plan".

- 3) Behavior management and human rights review

Each agency is required to establish or ensure a process for the periodic review of behavior intervention and human rights issues involved in the individual's treatment and/or habilitation. Agencies required to have behavior intervention and human rights review policies and procedures under licensure or certification standards shall continue to comply with those standards.

- 4) Abuse and neglect

Each agency shall have and use a process for reporting and handling instances of abuse and neglect in accordance with applicable standards, regulations and laws.

- 5) Admission to programming

- A) Agencies shall not discriminate in the admission to and provision of needed services to individuals on the basis of race, color, sex, religion, national origin, ancestry, or disability.

- B) Admission policies and procedures shall be set forth in writing and be available for review.

- 6) Compliance with life safety standards and requirements

All program facilities shall be in compliance with applicable State licensure requirements and local ordinances with regard to fire, building, zoning, sanitation, health, and safety

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

requirements.

- 7) Personnel requirements

- A) A licensed physician (MD or DO) shall assume medical and legal responsibility for medical services offered in any program, including prescription of medications.

- B) All services shall be provided by appropriately trained staff, operating under the supervision of qualified clinical professionals.

- 8) Mandated services

- A) Mandated services shall be provided according to the requirements as stated in the Department's rules at 59 Ill. Adm. Code 125 (Recipient Discharge/Linkage/Aftercare).

- B) The Department shall monitor the provision of mandated follow-up monitoring services as outlined in 59 Ill. Adm. Code 125.

- 9) Utilization review

Utilization review is the ongoing review of services delivered, their intensity and their duration, to determine adherence to generally accepted guidelines or standards regarding the individual's assessment, eligibility for service and appropriateness of services rendered. Agencies shall engage in a utilization review process for all program services.

- c) Medications

There shall be policies and procedures that address medications as follows:

- 1) All medications or treatments shall be specifically prescribed for the individual by a physician or dentist with the intent of the physician or dentist that it be taken by the individual under program oversight of the CRA staff.
- 2) The CRA as it exercises program oversight may, as needed, guide the individual resident in self-administration of medications or treatments as part of the training program for independent living if the resident is not capable of self-administration.
- 3) Prescription medications must be labeled with the individual's name, drug name, date dispensed and directions for when and how often the medication must be taken.
- 4) All medications and treatments taken by the individuals with developmental disabilities shall be recorded with date, time, dosage, and person exercising program oversight.

- d) Seclusion or restraint  
There shall be policies and assurances that prohibit the use of seclusion or restraints in any manner.

- e) Unusual incidents

- 1) The agency shall have written policies and procedures for handling, investigating, reporting, tracking and analyzing unusual incidents through the agency's management structure, up to and including the authorized agency representative. The agency shall ensure that staff demonstrate their knowledge of,

## DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

and follow such policies and procedures that shall include but are not limited to, the following:

- A) Sexual assault;
- B) Abuse or neglect;
- C) Death;
- D) Physical injury;
- E) Assault;
- F) Missing persons;
- G) Theft; and
- H) Criminal conduct.

2) Within 24 hours after an occurrence the agency shall report any incident that is subject to the Criminal Code of 1961 [720 ILCS 5] to the appropriate law enforcement agencies.

3) The agency shall ensure that suspected instances of abuse or neglect against individuals in programs that are licensed by the Department are reported to the Office of Inspector General (Section 6.2 of the Abused and Neglected Long Term Care Facility Residents Reporting Act [210 ILCS 30/6.2]).

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 113.140 Unusual occurrences (Repealed)

In the event of any unusual occurrence, including crimes committed by or to the resident, serious illness or accident, impending death, or death, the resident's next of kin or the person who functions in that capacity (a guardian or citizen advocate), agency and the Department shall be notified as soon as possible:

- a) The wishes and needs of the resident and/or the guardian, concerning religious matters, shall be determined and, insofar as possible, fulfilled;
- b) If a death occurs, the agency shall render as much assistance as possible in making arrangements for services and burial, as requested by the family and/or the guardian (if applicable);
- c) The coroner or medical examiner and other appropriate public authorities and guardians, if applicable, shall be notified of deaths in accordance with state laws.

(Source: Repealed at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

1) Heading of the Part: Standards and Licensure Requirements for Community-Integrated Living Arrangements

2) Code Citation: 59 Ill. Adm. Code 115

3) Section Number: Proposed Action:  
115.320 Amended

4) Statutory Authority: Implementing the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5].

5) A Complete Description of the Subjects and Issues Involved: Part 115 is being amended to require agencies with programs licensed or certified under the Community Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135] and this Part to report suspected incidents of abuse or neglect against individuals in these programs to the Office of Inspector General (Section 6.2 of the Abused and Neglected Long Term Care Facility Residents Reporting Act [210 ILCS 30/6.2]).

The Department realized the need for this rulemaking during the development of its rules on the investigations of alleged abuse or neglect and deaths in State-operated and community agency facilities. These rules (59 Ill. Adm. Code 50) will be proposed in the near future.

6) Will this proposed amendment replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporation by reference? No

9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
115.120	Amended	21 Ill. Reg. 1563
115.330	Amended	21 Ill. Reg. 1563
115.420	Amended	21 Ill. Reg. 1563

10) Statement of Statewide Policy Objectives: This rulemaking does not impact the State Mandates Act [30 ILCS 805].

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested person may submit comments, data, views or argument regarding this proposed rulemaking before the expiration



DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT(S)

of the first 45-day notice period. Submissions must be in writing and directed to:

Judith Hollenberg  
Rules Administrator  
Department of Mental Health  
and Developmental Disabilities  
401 Stratton Building  
Springfield IL 62765  
(217)785-3313  
FAX (217)524-8920

12) Initial Regulatory Flexibility Analysis:

- A) Types of small business affected: Private agencies that operate community-integrated living arrangements licensed by the Department.
- B) Reporting, bookkeeping or other procedures required for compliance: Agencies are required to report unusual incidents, as identified in this Part, to the appropriate law enforcement agencies and to the Office of Inspector General. No financial reporting is required.
- C) Types of professional skills necessary for compliance: No special skills needed.

- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not summarized on either of the two most recent regulatory agendas because: the Department did not anticipate that it would be proposing this rulemaking at the time either agenda was prepared.

The full text of the Proposed Amendment(s) begins on the next page:

DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT(S)

TITLE 59: MENTAL HEALTH  
CHAPTER I: DEPARTMENT OF MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES

PART 115

STANDARDS AND LICENSURE REQUIREMENTS FOR COMMUNITY-INTEGRATED LIVING ARRANGEMENTS

SUBPART A: GENERAL PROVISIONS

Section	Purpose
115.100	Incorporation by reference
115.110	Definitions
115.120	

SUBPART B: SERVICE REQUIREMENTS

Section	Description
115.200	Criteria for participation of individuals
115.210	Criteria for termination of individuals
115.215	Community support team
115.220	Interdisciplinary process
115.230	Medical services and medications
115.240	Individual rights and confidentiality
115.250	

SUBPART C: GENERAL AGENCY REQUIREMENTS

Section	Description
115.300	Environmental management of living arrangements
115.310	Geographic location of community-integrated living arrangements
115.320	Administrative requirements
115.321	Application for waiver of the prohibition against employment
115.325	Monitoring and evaluation
115.330	Accreditation

SUBPART D: LICENSURE REQUIREMENTS

Section	Applicability
115.400	Issuing a license and period of licensure
115.410	License application
115.420	Application acceptance and verification
115.430	Non-transferability of license
115.440	Cessation of operations
115.450	License revocation
115.460	Hearings
115.470	

APPENDIX A Specific Level of Functioning Assessment and Physical Health

DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT(S)

Inventory

**AUTHORITY:** Implementing the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135] and the Health Care Worker Background Check Act [225 ILCS 46], and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5].

**SOURCE:** Adopted at 14 Ill. Reg. 10865, effective July 1, 1990; emergency amendment at 14 Ill. Reg. 20550, effective December 5, 1990, for a maximum of 150 days; emergency expired May 18, 1991; amended at 15 Ill. Reg. 8560, effective May 24, 1991; emergency amendment at 16 Ill. Reg. 2676, effective February 1, 1992, for a maximum of 150 days; emergency expired on June 30, 1992; amended at 17 Ill. Reg. 21434, effective November 29, 1993; amended at 21 Ill. Reg. 2205, effective February 1, 1997; amended at 21 Ill. Reg. 6085, effective May 5, 1997; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART C: GENERAL AGENCY REQUIREMENTS

Section 115.320 Administrative requirements

- a) Governing body
  - 1) Each agency which is owned or operated by any corporation, association, or unit of local government shall have a governing body in which is vested authority and responsibility for the organization, management, control, and operation of the agency and all programs, services, facilities and residences it administers.
  - 2) Each agency shall have provisions for obtaining input from consumers and/or consumer representatives to the governing body.
- b) Staffing
  - 1) Mental health and developmental disabilities staff shall be licensed or certified as required by Illinois laws.
  - 2) When paraprofessional or untrained staff are used in direct services, they shall be supervised in the provision of services by professional staff.
- c) General program requirements

Agencies funded by the Department shall meet the following general program requirements for all funded services:

  - 1) Service setting

Services shall be provided in the setting most appropriate to the needs of the individual. This may include the individual's home, the agency, or the community. All settings shall be used innovatively in order to reach the target populations.
  - 2) Recordkeeping

DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT(S)

- A) Cumulative case records including an individualized service plan shall be maintained for each individual.
  - B) The individualized service plan shall state the goal(s) for each individual. The individual shall be afforded the opportunity and encouraged to participate in goal/objective selection. Goals/objectives shall include timeframes specified by the agency's professional staff, in consultation with the individual and relevant collaterals. "Individualized service plan", as used herein, refers to and is equivalent to "individual treatment plan" and "individual habilitation plan".
- 3) Behavior management and human rights review
- Each agency is required to establish or ensure a process for the periodic review of behavior intervention and human rights issues involved in the individual's treatment and/or habilitation. Agencies required to have behavior intervention and human rights review policies and procedures under licensure or certification standards shall continue to comply with those standards.
- 4) Abuse and neglect
- Each agency shall have and use a process for reporting and handling instances of abuse and neglect in accordance with applicable standards, regulations and laws.
- 5) Admission to programming
- A) Agencies shall not discriminate in the admission to and provision of needed services to individuals on the basis of race, color, sex, religion, national origin, ancestry, or disability.
  - B) Admission policies and procedures shall be set forth in writing and be available for review.
- 6) Compliance with life safety standards and requirements
- All program facilities shall be in compliance with applicable State licensure requirements and local ordinances with regard to fire, building, zoning, sanitation, health, and safety requirements.
- 7) Personnel requirements
- A) A licensed physician (MD or DO) shall assume medical and legal responsibility for medical services offered in any program, including prescription of medications.
  - B) All services shall be provided by appropriately trained staff, operating under the supervision of qualified clinical professionals.
- 8) Mandated services
- A) Mandated services shall be provided according to the requirements as stated in the Department's rules at 59 Ill. Adm. Code 125 (Recipient Discharge/Linkage/Aftercare).
  - B) The Department shall monitor the provision of mandated follow-up monitoring services as outlined in 59 Ill. Adm.

DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

- K) Documentation and recordkeeping requirements with reference to the services plan; and
- L) Other training which relates specifically to the type of disability or treatment and intervention techniques being used specific to individuals living in CILAs geared toward assisting staff execute objectives obtained in the services plans.
- 2) After completion of training specified in subsection (c)(1) of this Section, each direct service staff member shall participate in ongoing staff development activities as outlined in the agency's staff development plan.
- 3) All training shall be documented in each employee's personnel record and shall be readily available for review by Department surveyors.
- 4) The agency shall implement a written training plan which lists training to be offered to meet the requirements of this Part and the methods used for completion of any required training.

- e) Volunteer training  
The agency shall provide an orientation and training program for volunteers specific to volunteer duties and shall provide staff supervision as necessary.
- f) Quality assurance

- 1) There shall be a written quality assurance plan and ongoing activities designed to review and evaluate services to individuals, operation of programs and to resolve identified problems.
- 2) The agency's quality assurance program shall be the basis for annually certifying to the Department that individuals are receiving appropriate community-based services consistent with their services plans, that all programs and services are supervised by the agency and comply with this Part.

- A) If a certified CILA does not continue to meet standards, the agency shall correct deficiencies within 30 days; or
- B) If deficiencies in a certified CILA cannot be corrected within 30 days, the agency shall withdraw certification of the CILA program in question and notify the Department. The agency shall remain responsible for those individuals who live in or lived in the affected CILA.

## g) Unusual incidents

- 1) The agency shall ~~ensure that staff know how to address unusual incidents and shall~~ have written policies and procedures for handling, investigating, and reporting, tracking and analyzing of unusual incidents through the agency's management structure, up to and including the authorized agency representative. The agency shall ensure that staff demonstrate their knowledge of and follow such policies and procedures which shall include but are not limited to, the following:

DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

## NOTICE OF PROPOSED AMENDMENT(S)

## Code 125.

- 9) Utilization review  
Utilization review is the ongoing review of services delivered, their intensity and their duration, to determine adherence to generally accepted guidelines or standards regarding the individual's assessment, eligibility for service and appropriateness of services rendered. Agencies shall engage in a utilization review process for all program services.

- 10) Visits to programs  
The agency shall ensure that Department-authorized consumer interest groups shall be permitted, with the consent of individuals, to visit agencies and living arrangements owned or leased by an agency.

## d) Staff training

- 1) Direct service staff shall receive training as a part of an orientation program. Staff without previous experience in direct service to individuals shall receive training prior to unsupervised responsibility for direct service unless trained personnel are on site and available for on-the-job training. Direct service staff who have completed training in the below mentioned areas, as documented in their personnel records, shall not be required to repeat that training as part of their orientation. Staff without demonstrated competence shall receive training in the following areas, as recorded in their personnel records.

- A) Cardiopulmonary resuscitation (CPR), Heimlich maneuver and first aid;
- B) Concepts of treatment, habilitation and rehabilitation including behavior management, normalization, age appropriateness and psycho-social rehabilitation depending on the needs of the individuals served or to be served;
- C) Safety, fire, and disaster procedures;
- D) Abuse, neglect and unusual incident prevention, handling and reporting;
- E) Individual rights in accordance with Chapter 2 of the Code and maintaining confidentiality in accordance with the Confidentiality Act;
- F) The nature and structure of the individual integrated services plan;
- G) The type, dosage, characteristics, effects and side effects of medications prescribed for individuals;
- H) Screening for involuntary muscular movement, which may be indicative of tardive dyskinesia;
- I) Development and implementation of an individual integrated services plan;
- J) Formal assessment instruments used and their role in the development of the services plan;



DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT(S)

- A) Sexual assault;  
B) Abuse or neglect;  
C) Death;  
D) Physical injury ~~as clarified in the definition of "Abuse" in Section 115.120;~~  
E) Assault;  
F) Missing persons;  
G) Theft; and  
H) Criminal conduct.
- 2) Within 24 hours after an occurrence the agency shall report any incident which is subject to the Criminal Code of 1961 (~~Ill. Rev. Stat., ch. 38, par. 1-1 et seq.~~) [720 ILCS 5] to the local law enforcement agencies.
- 3) The agency shall ensure that suspected instances of abuse or neglect against individuals in programs which are licensed by the Department are reported to the Office of Inspector General (Section 6.2 of the Abused and Neglected Long Term Facility Residents Reporting Act [210 ILCS 30/6.2]) ~~Department.~~
- 4) ~~Either the Department of State Police or the Department shall investigate all incidents of abuse or neglect reported to the Department.~~
- h) Individuals' records
- 1) The agency shall ensure the confidentiality of individuals' records in accordance with the Act and shall ensure safekeeping of all records against loss or destruction.
- 2) The agency shall maintain a chronological record for each individual. Records shall be located at the program site at which individuals are being served.
- A) Each entry shall be legible, dated and authenticated by the signature and title of the person making the entry.  
B) Corrections shall be initialed and made in such a way as to leave the original incorrect entry legible.  
C) When symbols or abbreviations are used, the agency shall provide a legend to explain them which shall be standardized throughout the agency.
- 3) On an individual's entry into the agency, the following information shall be obtained, recorded and updated as necessary in the individual's record:
- A) Identifying information including name, date of birth, sex, race, social security number and legal status;  
B) The name, address and telephone number of the legal guardian or the person to be notified in case of an emergency;  
C) The language spoken or understood by the individual including, in the case of an individual who is hearing impaired, the individual's preferred mode of communication, e.g., American sign language, signed English, aural, oral or tactile communications device;

DEPARTMENT OF MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES

NOTICE OF PROPOSED AMENDMENT(S)

- D) Prescribed medications, reactions and side effects to medications, allergies to foods, other medications and substances;  
E) Physical and dental examinations, and medical history;  
F) Consent to receive emergency medical services; and  
G) Copies of the authorization for release of information.
- 4) The following shall be entered in the individual's record during the period of service:
- A) Written informed consent by the individual or guardian to participate in a CILA;  
B) Prior service history;  
C) Initial assessment and individual integrated services plan, and reassessments, and individual integrated services plan as described in Section 115.230 (f) through (o);  
D) Documentation of approval to use special procedures and the results of their use;  
E) Progress notes, which shall be entered chronologically and at least monthly, documenting the individual's involvement in and response to the services plan.
- i) Financial and operational requirements  
Agencies licensed to provide CILAs shall comply with 59 Ill. Adm. Code 103 (Grants).

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Illinois Veterans' Homes Code

2) Code Citation: 77 Ill. Adm. Code 340

3) Section Numbers: Proposed Action:

340.1255 New Section

340.1320 Amendments

340. Table A Amendments

4) Statutory Authority: Nursing Home Care Act (210 ILCS 45) and implementation P.A. 89-530.

5) A Complete Description of the Subjects and Issues Involved: The rules in Part 340 regulate the licensure of veterans' homes. Section 340.1255, being added to implement Public Act 89-530 (effective July 19, 1996), which amended the Illinois Act on the Aging, the Illinois Health Facilities Planning Act, and the Nursing Home Care Act to make changes in the Department on Aging's Supported Congregate Living Arrangements Demonstration Project. The amendment to the Nursing Home Care Act allows the Department of Public Health to grant waivers from the requirements of the Act for facilities participating in the supported congregate living arrangement demonstration project. The rule provides the information that must be included on a waiver application; references the criteria under which the application will be evaluated; and lists the circumstances under which the Department may revoke the waiver.

Section 340.1320 is being amended to revise requirements for disaster preparedness. A definition of "disaster" has been added. A written plan is required for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning. Established means of facility notification is required when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. Fire drills must be held at least quarterly, for each shift of personnel, and disaster drills for other than fire must be held twice annually, for each shift of personnel.

Section 340. Table A has been replaced with a new heat index/approximate temperature chart from the National Oceanic and Atmospheric Administration.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain Any Incorporations By Reference? No

9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers	Proposed Action	Ill. Reg. Citation
340.1376	Amendments	21 Ill. Reg. 3462
340.1377	Amendments	21 Ill. Reg. 3462

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing to:

Ms. Gail M. Devito  
Division of Governmental Affairs  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-6187

within 45 days after this issue of the *Illinois Register*.

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. Devito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: long-term care facilities

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None

C) Types of Professional Skills Necessary for Compliance: None

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

13) Regulatory Agenda in which this rulemaking was summarized: July 1997

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 340

## ILLINOIS VETERANS' HOMES CODE

## SUBPART A: GENERAL PROVISIONS

Section	
340.1000	Definitions
340.1010	Incorporated and Referenced Materials
340.1110	General Requirements
340.1115	Federal Veterans' Regulations
340.1120	Application for License
340.1130	Criteria for Adverse Licensure Actions
340.1140	Denial of Initial License
340.1150	Revocation or Denial of Renewal of License
340.1160	Inspections, Surveys, Evaluations, and Consultations
340.1170	Presentation of Findings by the Department
340.1190	Ownership Disclosure
340.1200	Monitor and Receivership
340.1210	Determination of a Violation
340.1220	Determination of the Level of a Violation
340.1230	Plans of Correction and Reports of Correction
340.1240	Calculation of Penalties
340.1245	Conditions for Assessment of Penalties
340.1250	Reduction or Waiver of Penalties
340.1255	Supported Congregate Living Arrangement Demonstration
340.1260	Waivers

## SUBPART B: POLICIES AND FACILITY RECORDS

Section	
340.1300	Facility Policies
340.1310	Admission and Discharge Policies
340.1320	Disaster Preparedness
340.1330	Serious Incidents and Accidents
340.1335	Infection Control
340.1340	Facility Record Requirements
340.1350	Personnel Policies
340.1360	Initial Health Evaluation for Employees
340.1370	Administrator
340.1375	Personnel Requirements
340.1376	Registry of Certified Nurse Aides
340.1377	Health Care Worker Background Check



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART C: RESIDENT RIGHTS

## Section Implementation of Resident Rights and Facility Responsibilities

340.1400 General  
 340.1410 Contract Between Resident and Facility  
 340.1420 Residents' Advisory Council  
 340.1430 Abuse and Neglect  
 340.1440 Communication and Visitation  
 340.1450 Resident's Funds  
 340.1460 Transfer or Discharge  
 340.1470 Complaint Procedures  
 340.1480 Private Right of Action  
 340.1490

## SUBPART D: HEALTH SERVICES

## Section

340.1500 Medical Care Policies  
 340.1505 Medical, Nursing and Restorative Services  
 340.1510 Communicable Disease Policies  
 340.1520 Tuberculin Skin Test Procedures  
 340.1530 Physician Services  
 340.1535 Dental Programs  
 340.1540 Life-Sustaining Treatments  
 340.1550 Obstetrical and Gynecological Care  
 340.1560 Nursing Personnel  
 340.1570 Personal Care  
 340.1580 Restraints  
 340.1590 None emergency Use of Physical Restraints  
 340.1600 Emergency Use of Physical Restraints  
 340.1610 Unnecessary, Psychotropic, and Antipsychotic Drugs  
 340.1620 Medication Administration  
 340.1630 Self-Administration of Medication

## SUBPART E: MEDICATION ADMINISTRATION SERVICES

## Section

340.1650 Medication Policies and Procedures  
 340.1655 Conformance with Physician's Orders  
 340.1660 Administration of Medication  
 340.1665 Control of Medication  
 340.1670 Labeling and Storage of Medication

## SUBPART F: RESIDENT LIVING SERVICES

## Section

340.1700 Recreational and Activity Programs  
 340.1710 Social Services

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## 340.1720 Work Programs

## SUBPART G: RESIDENT RECORDS

## Section

340.1800 Resident Record Requirements  
 340.1810 Content of Medical Record  
 340.1820 Records Pertaining to Resident's Property  
 340.1830 Retention, Transfer, and Inspection of Records  
 340.1840 Confidentiality of Resident's Records

## SUBPART H: FOOD SERVICE

## Section

340.1900 Food Service Staff  
 340.1910 Diet Orders  
 340.1920 Adequacy of Diet and Meal Pattern  
 340.1930 Therapeutic Diets  
 340.1940 Menu Planning  
 340.1950 Food Preparation and Service  
 340.1960 Kitchen Equipment, Utensils and Supplies

SUBPART I: PHYSICAL PLANT SERVICES,  
FURNISHINGS, EQUIPMENT AND SUPPLIES

## Section

340.2000 Maintenance  
 340.2010 Water Supply, Sewage Disposal and Plumbing  
 340.2020 Housekeeping  
 340.2030 Laundry Services  
 340.2040 Furnishings  
 340.2050 Equipment and Supplies

## TABLE A

Heat Index Table/Apparent Temperature Disaster---Preparedness  
 Parameters--Relative Humidity--and Temperature  
 Guidelines for the Use of Various Drugs

## TABLE B

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rule adopted at 18 Ill. Reg. 10391, effective June 21, 1994, for a maximum of 150 days; emergency rule expired November 18, 1994; adopted at 19 Ill. Reg. 5679, effective April 3, 1995; emergency amendments at 20 Ill. Reg. 496, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10045, effective July 15, 1996; amended at 20 Ill. Reg. 12013, effective September 10, 1996; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

**Section 340.1255 Supported Congregate Living Arrangement Demonstration**

- a) A facility or location approved to participate in the Supported Congregate Living Arrangement Demonstration authorized by Section 4.02b of the Illinois Act on the Aging [20 ILCS 105/4.02b] and requesting a waiver of the Act and this Part shall submit to the Department a joint waiver request with the Department on Aging or documentation that the Department on Aging failed to act upon a waiver application within 60 days after the applicant submitted a request to the Department on Aging (Section 4.02b of the Illinois Act on the Aging).
- b) The waiver application shall include the following:
- 1) a specific listing of those portions of the Act and this Part for which a waiver is being requested; and
  - 2) the applicant's proposed Program Plan.

- c) The proposed Program Plan shall describe the types of residents to be served and the services that will be provided in the Supported Congregate Living Arrangement Demonstration. (Section 3-102.2 of the Act)

- d) The Department will evaluate the waiver application based on the criteria in Section 340.1260 of this Part. The applicant shall be notified within 10 days after the Department's waiver determination. The Department may revoke the waiver if the Department determines that the Supported Congregate Living Arrangement Demonstration:

- 1) is not in compliance with the Program Plan submitted in accordance with subsection (b) of this Section (Section 3-102.2 of the Act);
- 2) is not in compliance with the Department's waiver approval conditions; or
- 3) has been terminated from the demonstration by the Department on Aging.

(Source: Added at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: RESIDENT RIGHTS

**Section 340.1320 Disaster Preparedness**

- a) For the purpose of this Section only, "disaster" means an occurrence, as a result of a natural force or mechanical failure such as water, wind or fire, or a lack of essential resources such as electrical power, that poses a threat to the safety and welfare of residents, personnel, and others present in the facility.
- b) Each facility shall have policies covering disaster preparedness, including a written plan for staff, residents and others to follow in case of fire, explosion, severe weather or other hazardous circumstances or emergencies. The plan shall be rehearsed at least

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

twice-a-year-for-each-shift. The plan shall include, but is not be limited to, the following:

- 1) All personnel employed on the premises shall be properly instructed in the use of fire extinguishers.
- 2) A diagram written plan of the evacuation route shall be posted, and made familiar to all personnel employed on the premises.
- 3) A written plan shall be developed for moving residents to safe locations within the facility in the event of tornado warning or severe thunderstorm warning.
- 4) There shall be an established means of facility notification when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. The notification mechanism must be other than commercial radio or television. Approved notification measures include being within range of local tornado warning sirens, an operable National Oceanic and Atmospheric Administration weather radio in the facility or arrangements with local public safety agencies (police, fire, ESDA) to be notified if a warning is issued.

- c) Fire and disaster drills shall be held at least quarterly for each shift of facility personnel. Disaster drills for other than fire shall be held twice annually for each shift of facility personnel. Drills shall be held under varied conditions to: and-under-varied conditions, in order to:

- 1) Ensure that all personnel on all shifts are trained to perform assigned tasks;
  - 2) Ensure that all personnel on all shifts are familiar with the use of the fire fighting equipment in the facility; and
  - 3) Evaluate the effectiveness of disaster plans and procedures.
- d) Fire and-disaster drills shall include simulation of evacuation of residents to safe areas during at least one drill each year on each shift.
- e) There shall be special provisions for the evacuation of physically handicapped persons individuals, including those who are hearing or sight impaired.
- f) Where the welfare of the residents precludes an actual evacuation of an entire building, there must be drills involving the evacuation of successive portions of the building under such conditions as to assure the capability of evacuating the entire building with the personnel usually available, should the need arise.
- g) A where-shall-be-a written evaluation of each drill shall be submitted to the facility administrator and which shall be maintained for a year.
- h) A written plan shall be developed for temporarily relocating the residents for any disaster emergency requiring relocation and any time the temperature in residents' bedrooms falls below 55° F. degrees Fahrenheit for 12 hours or more.

- i) Reporting of Disasters Emergencies

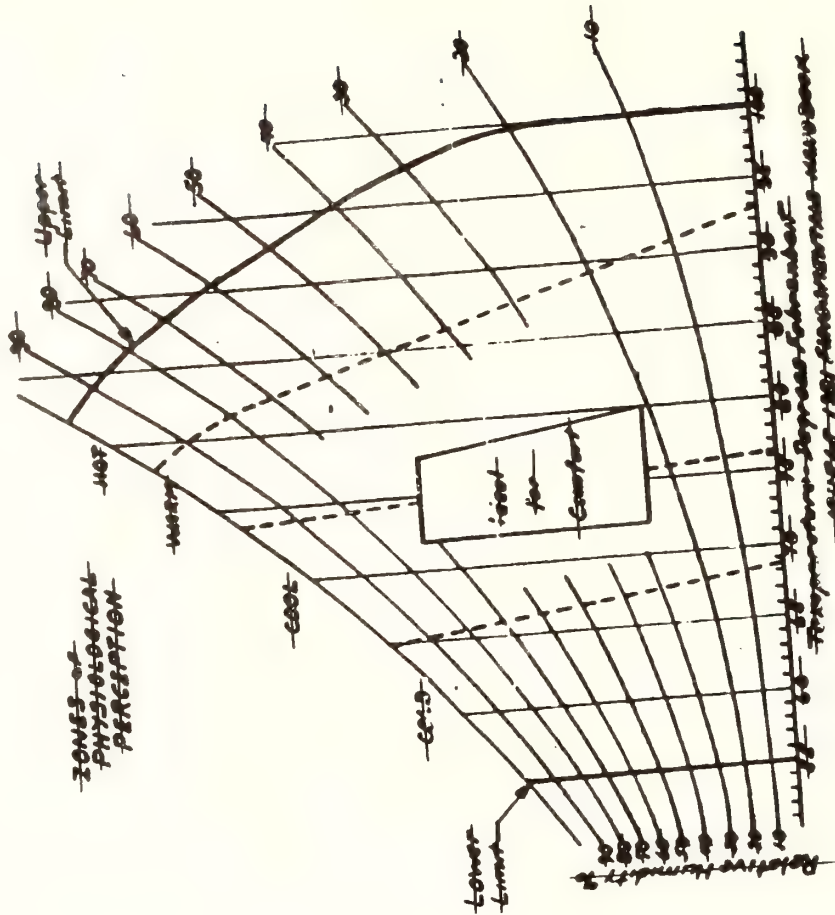
DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

- 1) Upon the occurrence of any emergency--or disaster requiring hospital service, police, fire department or coroner, the facility administrator or their designee must provide a preliminary report to the Department by either by using uttizing the nursing home hotline or by contacting directly contacting the appropriate Department Regional Office during business hours. This preliminary report shall include, at a minimum:
- A) name Name and location of facility;
  - B) type of disaster emergency;
  - C) number of injuries or deaths to residents;
  - D) number of beds not usable due to the disaster event;
  - E) estimate of the extent of damages to the facility;
  - F) type of assistance needed, if any; and
  - G) other State state or local agencies notified about the problem.
- 2) If the disaster emergency will not require direct Departmental assistance, the facility shall provide the preliminary report within 24 hours after of the occurrence incident. Additionally, the facility shall submit to--the--Department a full written account to the Department of--the--emergency within seven days after the occurrence of--the--incident, which includes the information specified in subsection subsections (i)(h)(l)(t) through--(h)(t)(t)(t) of this Section and a statement of actions taken by the facility after the preliminary report.
- 1) Each facility shall establish and implement policies and procedures in a written plan to provide for the health, safety, welfare and comfort of all residents when the heat index/apparent temperature (see Section 340.Table A), as established by the National Oceanic and Atmospheric Administration, inside the residents' living, dining, activities, or sleeping areas of the facility exceeds a heat index/apparent temperature of 80°F. whenever--the--temperature--and relative-humidity--inside--the--residents--living--dining--activities--or sleeping--areas--of--the--facility--are--equal--to--or--exceed--the--upper--or lower--limit--lines--(the--solid--lines)--of--the--chart--"Zones--of Physiological--Perception"--displayed--in--Section--340--Table--A. Disaster--Preparedness--Parameters--Relative--Humidity--and Temperature--(A7B)

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Section 340. TABLE A Heat Index Table/Apparent Temperature  
Preparedness-Parameters--Relative-Humidity-and-temperature Disaster





DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

(Table is from the National Oceanic and Atmospheric Administration)

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Air Temperature (degrees Fahrenheit)

Air Temperature (degrees Fahrenheit)

	70	75	80	85	90	95	100	105	110	115	120	125	130	135
5	64	69	74	79	84	88	93	97	102	107	111	116	122	128
10	65	70	75	80	85	90	95	100	105	111	116	123	131	
15	65	71	76	81	86	91	97	102	108	115	123	131		
20	66	72	77	82	87	93	99	105	112	120	130	141		
25	66	72	77	83	88	94	101	109	117	127	139			
30	67	73	78	84	90	96	104	113	123	135	148			
35	67	73	79	85	91	98	107	118	130	143				
40	68	74	79	86	93	101	110	123	137	151				
45	68	74	80	87	95	104	115	129	143					
50	69	75	81	88	96	107	120	135	150					
55	69	75	81	89	98	110	126	142						
60	70	76	82	90	100	114	132	149						
65	70	76	83	91	102	119	138							
70	70	77	85	93	106	124	144							
75	70	77	86	95	109	130								
80	71	78	86	97	113	136								
85	71	78	87	99	117									
90	71	79	88	102	122									
95	71	79	89	105										

(Table is from the National Oceanic and Atmospheric Administration)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED RULES

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED RULES

10) Statement of Statewide Policy Objectives: This rulemaking will not create or expand a State mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Gail M. DeVito  
Division of Governmental Affairs  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
(217) 782-6187

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses Affected: This rulemaking will not affect small businesses.

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None

C) Types of Professional Skills Necessary for Compliance: None

13) Date of regulatory agenda on which this rulemaking was summarized: July 1997

The full text of the Proposed Rule begins on the next page:

1) Heading of the Part: Control of Tuberculosis Code

2) Code Citation: 77 Ill. Adm. Code 696

3) <u>Section Numbers:</u>	<u>Proposed Action:</u>
696.100	New Section
696.110	New Section
696.130	New Section
696.140	New Section
696.150	New Section
696.160	New Section
696.170	New Section
696.180	New Section
696.190	New Section
696.200	New Section
696.210	New Section
696.Appendix A	New Section
696.Appendix B	New Section

4) Statutory Authority: Implementing the Communicable Disease Report Act [745 ILCS 45] and implementing and authorized by the Department of Public Health Act [20 ILCS 2305].

5) A Complete Description of the Subject and Issues Involved: The Department's current tuberculosis prevention and control rules (Section 690.720 of the Control of Communicable Diseases Code (77 Ill. Adm. Code 690)) were adopted in 1985, and amended in 1988. Since that time, accepted practices in addressing TB disease have changed dramatically, resulting in rules that do not reflect currently accepted methods of TB prevention and control.

The proposed rules include current methods of preventing and controlling the spread of TB, and procedures for enforcement of TB prevention and control requirements. Specifically, the rules address screening for TB infection and disease, management of persons with TB infection, diagnosis and management of persons with suspected or confirmed TB disease, reporting, and enforcement procedures. The responsibilities of health professionals and patients to whom the rules are applicable are also included.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain any Incorporations by Reference? No

9) Are there any other Proposed Amendments Pending on this Part? No

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER k: COMMUNICABLE DISEASE CONTROL AND IMMUNIZATIONS

## PART 696

## CONTROL OF TUBERCULOSIS CODE

## SUBPART A: GENERAL PROVISIONS

Section  
696.100  
696.110

Definition of Terms  
Incorporated Materials

## SUBPART B: TUBERCULOSIS PREVENTION AND CONTROL MEASURES

Section  
696.130  
  
696.140  
696.150  
696.160  
  
696.170

Responsibilities of High-Risk Congregate Settings and Programs  
Providing Alcohol and Drug Treatment  
Screening for Tuberculosis Infection and Disease  
Management of Persons with Tuberculosis Infection  
Diagnosis and Management of Persons with Suspected and Confirmed Tuberculosis Disease  
Reporting

## SUBPART C: ENFORCEMENT OF TUBERCULOSIS PREVENTION AND CONTROL MEASURES

Section  
696.180  
696.190  
696.200  
696.210  
696.APPENDIX A  
696.APPENDIX B

Role of the Department in Enforcement  
Role of the Local Tuberculosis Control Authority in Enforcement  
Types of Directives  
Potential Recipients of Directives  
Mantoux Skin Testing Procedures  
Employees and Clients Required to Have a Mantoux Skin Test

**AUTHORITY:** Implementing the Communicable Disease Report Act [745 ILCS 45] and implementing and authorized by the Department of Public Health Act [20 ILCS 2305].

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## SUBPART A: GENERAL PROVISIONS

**Section 696.100 Definition of Terms**

For the purpose of this Part, the following shall be the accepted definitions of the terms used herein:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

"Anergy" means the absence of a reaction to skin test antigens, such as tuberculin (when the person is infected with the organism tested) because of immunosuppression. The absence of a reaction to the tuberculin skin test does not rule out the diagnosis of tuberculosis (TB) infection or disease. Anergy may be caused by many factors, such as HIV infection, overwhelming miliary or pulmonary TB, severe or febrile illness, measles or other viral infections, Hodgkin's disease, sarcoidosis, live virus vaccination, and the administration of corticosteroids or immunosuppressive drugs.

"Bacteriologic Examinations" means tests done in a mycobacteriology laboratory to diagnose TB disease, including smears for acid-fast bacilli (AFB), cultures and other tests for Mycobacterium (M.) tuberculosis, and drug susceptibility tests.

"BCG Vaccine" means a TB vaccine used in many parts of the world.

"Checklist of Signs and Symptoms of TB Disease" means a list that includes the following signs and symptoms: pulmonary - productive prolonged cough, chest pain, hemoptysis; generalized - fever, chills, night sweats, easy fatigability, loss of appetite and weight loss.

"Close Contacts" means people who spend time with a person who has suspected or confirmed TB disease. The risk of transmission is greatest for contacts who have spent the most time in close contact (particularly sharing the same indoor environment) with the case; household contacts are usually at highest risk.

"Confirmed Case" means an occurrence of TB disease that is laboratory confirmed or, in the absence of laboratory confirmation, an occurrence that meets the clinical case definition.

Laboratory confirmation - Laboratory criteria for diagnosis includes isolation of M. tuberculosis from a clinical specimen; demonstration of M. tuberculosis from a clinical specimen by DNA probe or mycolic acid pattern on high-pressure liquid chromatography; or demonstration of acid-fast bacilli in clinical specimen when a culture has not been or cannot be obtained.

Clinical case definition - A clinical case meets all the following criteria: a positive Mantoux tuberculin skin test (Mantoux skin test); other signs and symptoms compatible with TB, such as an abnormal, unstable (worsening or improving) chest radiograph, or clinical evidence of current disease; treatment with two or more anti-tuberculosis medications; and completed diagnostic evaluation.

"Department" means the Illinois Department of Public Health.



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

"High-Risk for Nonadherence to a Prescribed Treatment Regimen" means any person who has a history of treatment nonadherence; whose treatment has failed or disease has relapsed; who uses alcohol or controlled substances; who has mental, emotional, or physical impairments that interfere with the ability to self-administer medications; or who is a child or adolescent.

"High-Risk Groups" means those with increased probability of becoming infected with TB, or, once infected, have increased probability of progressing to TB disease. Persons in high-risk groups include:

close contacts;

persons with or at risk for infection with HIV/AIDS;

persons who inject non-prescribed drugs or other locally identified high-risk substance users (e.g., crack cocaine users);

persons who have medical risk factors known to increase the risk for disease if infection occurs. Medical risk factors means the following conditions: infection with HIV/AIDS; substance abuse (especially non-prescribed drug injection); recent (within the past 2 years) infection with M. tuberculosis; chest radiograph findings suggestive of previous TB in a person who received inadequate or no treatment; diabetes mellitus; silicosis; prolonged corticosteroid therapy; other immunosuppressive therapy; cancer of the head and neck; hematologic and reticuloendothelial diseases (e.g., leukemias and Hodgkin's disease); end-stage renal disease; intestinal bypass or gastrectomy; chronic malabsorption syndromes; and low body weight (10% or more below the ideal);

clients, employees and volunteers of high-risk congregate settings;

healthcare workers (HCW) who serve high-risk clients;

persons who have immigrated within the past 5 years from countries that have a high TB incidence or prevalence (e.g., certain countries in Africa, Asia, and Latin America);

some medically underserved low-income populations as defined locally; high-risk racial or ethnic minority populations as defined locally; infants, children, and adolescents exposed to adults in high-risk categories; and

other high-prevalence groups defined locally.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

"Diagnostic Evaluation" means a process used to diagnose TB disease which includes a physical examination, medical history, Mantoux skin test, chest radiograph and bacteriologic examinations.

"Directly Observed Therapy" (DOT) means a process by which a trained healthcare worker or other designated trained person watches the patient swallow each dose of TB medication. Family members are generally not recommended to provide DOT.

"Directly Observed Preventive Therapy" (DOPT) means a process by which a trained healthcare worker or other designated trained person watches the patient swallow each dose of preventive TB medication. Family members are generally not recommended to provide DOPT.

"Employee" means a full-time, part-time or temporary worker who receives compensation. (See definition of "volunteer".)

"Facility" means any organization or unit of an organization.

"Healthcare Facility" means a hospital, medical ward in a correctional facility, nursing home or hospice. (See definition of "Other Healthcare Facility".)

"Healthcare Worker" means a paid employee or volunteer in a healthcare facility who has the potential for exposure to M. tuberculosis. Healthcare workers may include, but are not limited to, physicians, nurses, aides, dental workers, technicians, workers in laboratories and morgues, emergency medical service personnel, students, part-time personnel, temporary staff not employed by the healthcare facility, and persons who are not involved directly in patient care but who are potentially at risk for occupational exposure to M. tuberculosis (e.g., volunteers, or dietary, housekeeping, maintenance, clerical, and janitorial staff).

"High-Risk Congregate Setting" means, but is not limited to, detention centers, in-patient healthcare facilities, nursing homes and other long-term care facilities for the elderly, mental health facilities, licensed supportive residences for HIV-infected persons, shelters for the homeless, other long-term residential facilities and programs where persons who inject non-prescribed drugs or other locally identified high-risk substance users (e.g., crack cocaine users) are treated.

Other long-term residential facilities includes facilities that care for the developmentally disabled, are designed for retirees, or others and that are considered high-risk congregate settings according to a risk assessment performed in cooperation with the local TB control authority.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

"Infection" means the condition in which organisms (e.g., M. tuberculosis) capable of causing disease enter the body and elicit a response from the host's immune defenses. TB infection may or may not progress to clinical disease.

"Infectious" means a person who has, or is suspected of having, pulmonary or laryngeal TB and who:

coughs, is undergoing cough-inducing or aerosol-generating procedures, or has sputum smears that contain AFB; and

is not receiving treatment, has just begun treatment, or has a poor clinical or bacteriologic response to treatment. A person on treatment for 1 month or less is considered to have just begun treatment. A poor clinical response to treatment can be suggested by a failure of signs and symptoms to improve after two months of treatment. A poor bacteriologic response to treatment can be suggested by a failure of AFB on smear to decrease after two weeks of treatment.

"Intermittent Therapy" means therapy administered either 2 or 3 times per week, rather than each day.

"Likely to Become Infectious" means a person whose treatment has failed; whose disease has relapsed; who does not consistently adhere to or complete a prescribed treatment regimen; who has received inadequate treatment; or who has drug-resistant disease.

"Local TB Control Authority" means the agency at the local level recognized by the Department as having jurisdiction over the prevention and control of tuberculosis. The local TB control authority may be an autonomous TB board or TB program within a local health department.

"Long-Term Inmate" means an inmate who will remain in custody for a period of 14 days or longer.

"Mantoux Tuberculin Skin Test or Mantoux Skin Test" means a method of skin testing that is performed by injecting 0.1 mL of PPD-tuberculin (purified protein derivative-tuberculin) containing 5 tuberculin units into the dermis of the forearm with a needle and syringe.

"Negative Cultures" means cultures that contain no detectable tubercle bacilli.

"Nonadherence" means not following the recommended course of treatment or therapy by not taking all the medications in the manner prescribed for the entire length of time.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

"Noninfectious" means a person previously determined to be infectious who now meets the following criteria:

received a treatment regimen for two or more weeks composed of multiple drugs to which the organisms are susceptible in accordance with the incorporated publication, Treatment of TB and TB Infection;

has favorable clinical response to treatment; and

has 3 consecutive negative sputum smear results from sputum collected on different days.

"OSHA" means the U.S. Department of Labor, Occupational Safety and Health Administration.

"Other Healthcare Facility" means an ambulatory care facility, emergency department, home healthcare setting, emergency medical services, medical and dental office, and other facility or residential location in which medical care is provided. (See definition of "Healthcare Facility".)

"Past or Present Behavior that Indicates a Substantial Likelihood of Not Cooperating with Prevention and Control Measures" means, but is not limited to:

refusal or failure to keep appointments for diagnosis or treatment;

refusal or failure to consistently adhere to and complete a prescribed preventive therapy or disease treatment regimen;

refusal or failure to participate in DOT or DOT;

disregard for isolation procedures;

leaving the hospital against medical advice; or

inability or unwillingness to voluntarily use prevention and control measures.

"Preventive Therapy" means treatment of TB infection to prevent the progression to clinically active disease.

"Relapse" means the return of TB disease after a partial recovery from disease.

"Short-Term Inmate" means an inmate who remains in custody for less

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

than 14 days, especially pretrial detainees likely to be released without supervision or placed in the community under court supervision.

"Suspected Case" means an occurrence that is being strongly considered as TB disease although the diagnostic evaluation is not complete. The evaluation may include a bacteriologic examination revealing AFB in a sputum smear, a chest radiograph suggestive of TB, or symptoms highly suggestive of TB. The probability of TB is greater among patients who have a positive Mantoux skin test or a history of a positive skin test result, who have previously had TB or have been exposed to M. tuberculosis, or who belong to a group at high-risk for TB.

"Treatment Failure" means TB disease in patients who do not respond to chemotherapy and whose disease worsens after having improved initially.

"Volunteer" means a person who, for a period of time, provides services of his or her own free will with no promise of compensation. Designation of volunteer status may be defined by the local TB control authority. (See definition of "employee".)

**Section 696.110 Incorporated Materials**

- a) The following materials are incorporated by reference in this Part:
  - 1) "Controlling TB in Correctional Facilities", U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta, Georgia 30333 (1995).
  - 2) "Core Curriculum on Tuberculosis, What the Clinician Should Know" (Core Curriculum), U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta, Georgia 30333 (1994).
  - 3) "Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health-Care Facilities, 1994" (Guidelines for Healthcare Facilities), U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR) 1994;43(No. RR-13)).
  - 4) "OSHA Instruction CPL-106, February 9, 1996" (OSHA Instruction).
  - 5) "Prevention and Control of Tuberculosis in Correctional Facilities", U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR) 1996;45(No. RR-8)).
  - 6) "The Role of BCG Vaccine in the Prevention and Control of Tuberculosis in the United States" (The Role of BCG Vaccine), U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta,

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR) 1996;45(No. RR-4)).

- 7) "Screening for Tuberculosis and Tuberculosis Infection in High-risk Populations" (Screening High-risk Populations), U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta, Georgia 30333, HHS Publication No. (CDC) 95-8017 (1995).
- 8) "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children" (Treatment of TB and TB Infection), American Thoracic Society, Medical Section of the American Lung Association, U.S. G.P.O.:1994-533-001:501.
- b) All incorporations by reference of guidelines of federal agencies and the standards of nationally recognized organizations refer to the guidelines and standards on the date specified and do not include any additions or deletions subsequent to the date specified.

**SUBPART B: TUBERCULOSIS PREVENTION AND CONTROL MEASURES****Section 696.130 Responsibilities of High-Risk Congregate Settings and Programs Providing Alcohol and Drug Treatment**

- a) Written Plans. A written plan shall be developed and updated periodically that includes protocols for screening and management of infection among employees, volunteers and clients; screening, diagnosis and management of TB disease among employees, volunteers and clients; data collection management; reporting of persons with signs or symptoms of TB to the local TB control authority; and an employee and volunteer education program. All components of the plan shall reflect compliance with this Part. The plan shall include the: name of the person or persons responsible for the TB prevention and control program at each facility; procedures for the purpose of protecting employees, volunteers and clients from contracting tuberculosis; (see the incorporated publications Guidelines for Healthcare Facilities and Core Curriculum (other facilities)) and a referral mechanism to ensure prevention of transmission and completion of treatment for clients with TB who leave the facility.
- b) TB Prevention and Control Program. A program shall be executed in accordance with the written plan.
- c) Employee and Volunteer Education. Training about TB shall be provided or arranged. All employees and volunteers shall be trained upon hiring and periodically thereafter to ensure employee knowledge equivalent to the employee's work responsibilities and the level of risk in the facility. OSHA-regulated settings and programs shall comply with the incorporated publication, OSHA Instruction.
- d) Collaboration. The settings and programs listed above shall consult with the local TB control authority, as necessary, to determine their respective responsibilities in the screening, diagnosis and management of TB infection and disease, reporting of disease, and the education



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

of employees and volunteers.

- e) Records. Records shall be maintained on Mantoux skin test results; TB diagnostic evaluation results; other information about any persons exposed to tuberculosis, including whether the tuberculosis was drug-resistant; and the current written plan as required in subsection (a) of this Section. Individual and aggregate data should be analyzed periodically to identify the facility's level of risk and changes in the risk of TB transmission. Correctional facilities should maintain a retrievable aggregate record system in accordance with the incorporated publication, Prevention and Control of Tuberculosis in Correctional Facilities. All records required in this subsection shall be made available for inspection by the Department or the local TB authority upon request.

#### Section 696.140 Screening for Tuberculosis Infection and Disease

The Mantoux skin test shall be used when screening persons for infection. (See Appendices A and B of this Part.) Chest radiographs and bacteriologic examinations can be used when screening certain persons for disease. (See subsection (b)(2) of this Section.)

- a) Screening for TB Infection.
  - 1) Close Contacts. Persons who are close contacts to suspected or confirmed cases of TB disease shall be tested with the Mantoux skin test to identify infection. Close contacts shall be retested 3 months after the last exposure if their reaction to the first skin test was negative. A high priority should be given to evaluating contacts who are children or contacts infected with HIV/AIDS.
  - 2) Employees, Volunteers and Clients of High-Risk Congregate Settings and Programs Providing Alcohol and Drug Treatment. Screening shall be done in accordance with this subsection, Appendices A and B, and the following incorporated publications: Screening High-Risk Populations; Guidelines for Healthcare Facilities; Controlling TB in Correctional Facilities; and the OSHA Instruction.
    - A) Employees and volunteers in high-risk congregate settings and programs providing alcohol and drug treatment, who are part of a routine, periodic screening program, shall initially be screened by two-step testing. The first Mantoux skin test shall be obtained within 10 days after being employed. Persons who are not part of a routine, periodic screening program shall be screened by a single Mantoux skin test. These screening requirements can be modified or waived in accordance with Appendix B of this Part. Routine, periodic screening of employees and volunteers should be determined by a risk assessment performed in cooperation with the local TB control authority.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

- B) Except as specified in subsections (a)(2)(B)(i), (ii), and (iii) of this Section, all clients in high-risk congregate settings and high-risk clients in programs providing alcohol and drug treatment, who are part of a routine, periodic screening program, should be initially screened by two-step testing. The first Mantoux skin test should be obtained within 7 days after admission. Persons who are not part of a routine, periodic screening program shall be screened by a single Mantoux skin test. These screening requirements can be modified or waived in certain instances. (See Appendices A and B of this Part.) Routine, periodic screening of clients should be determined by a risk assessment performed in cooperation with the local TB control authority.
- i) Nursing home residents, persons who inject non-prescribed drugs, other locally identified high-risk substance users (e.g., crack cocaine users), and clients of programs providing methadone maintenance therapy shall be initially screened by two-step testing. The first Mantoux skin test shall be obtained within 7 days after admission. This requirement can be modified or waived in certain instances. Routine periodic screening is recommended. (See Appendices A and B of this Part.)
  - ii) Homeless persons and short-term inmates should be screened on admission, when feasible. Routine, periodic screening of the homeless should also be done when feasible. (See subsections (b)(1)(B) and (b)(2) of this Section.)
  - iii) Inmates of detention centers shall be screened in accordance with the incorporated publications: Controlling TB in Correctional Facilities; and Prevention and Control of Tuberculosis in Correctional Facilities. Long-term inmates in detention centers shall be screened within 7 days after admission. Short-term inmates in detention centers should be screened within 7 days after admission, when feasible. Two-step testing should be done when feasible. Routine, periodic screening of long-term inmates should be done. Regardless of skin test results, inmates who have HIV infection and those at risk for HIV infection but whose HIV status is unknown should have a chest radiograph as part of the initial screening. (See subsection (b) of this Section for requirements for screening short-term and long-term inmates for disease.)
- 3) Employees, Volunteers and Clients of Other Healthcare Facilities. Other healthcare facilities such as ambulatory care facilities should conduct screening programs for employees, volunteers and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

high-risk clients in accordance with the incorporated publication, Guidelines for Healthcare Facilities, and as determined by a risk assessment performed in cooperation with the local TB control authority.

- 4) Other High-Risk Groups. Screening of groups, such as persons who have immigrated from countries that have a high TB incidence or prevalence (e.g., certain countries in Africa, Asia, and Latin America), shall be conducted in accordance with the incorporated publications: Screening High-Risk Populations; and Core Curriculum. Local health departments should screen their clients who are in high-risk groups and maintain records of Mantoux skin test results.
- 5) Employees, Volunteers and Students in a School or School District (Pupil Attendance Center).

A) Initial skin testing of employees and volunteers in a school or a school district shall be performed by a Mantoux skin test within 7 days after beginning employment. This requirement can be modified or waived in accordance with Appendix B of this Part.

B) When a community, school, or school district has a higher than expected prevalence of TB infection, the local TB control authority and the Department may institute routine, periodic skin testing of school employees, volunteers and students. Any such testing program should take into consideration:

- i) epidemiologic factors and currently accepted public health standards pertaining to the prevention and control of TB; and
- ii) the identification and availability of necessary school, school district or local TB control authority resources and facilities.

b) Screening for TB Disease.

- 1) Checklist of Signs and Symptoms. A checklist that includes but is not limited to pulmonary symptoms (productive prolonged cough, chest pain, hemoptysis) and generalized signs and symptoms (fever, chills, night sweats, easy fatigability, loss of appetite and weight loss) shall be used to screen for TB disease in the following circumstances:

A) Persons with a documented prior positive Mantoux skin test who are required to receive skin tests routinely and periodically shall, instead of receiving skin tests, complete a signs and symptoms checklist routinely and periodically. A checklist takes the place of a skin test for these persons. Repeat skin testing is not needed or required. Routine, periodic chest radiographs should not be done. Chest radiographs do not take the place of a skin test or checklist.

B) Clients admitted to high-risk congregate settings and

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

programs providing alcohol and drug treatment shall be screened for current disease status with a signs and symptoms checklist in addition to meeting other screening requirements for infection.

- 2) Chest Radiography or Bacteriologic Examinations. The use of chest radiography or bacteriologic examinations should be considered in certain instances in addition to a signs and symptoms checklist.

A) Chest radiography may be the best screening method in jails, homeless shelters, and single-room-occupancy facilities that house the homeless for more than one night. Also, inmates who either have HIV infection or are at risk for HIV infection, but whose HIV status is unknown, should receive a chest radiograph as part of the initial screening, regardless of skin test results.

B) Screening for disease among the homeless may also include sputum smears and cultures.

## Section 696.150 Management of Persons with Tuberculosis Infection

a) Preventive Therapy. Before therapy is started, persons with a positive skin test reaction shall receive a diagnostic evaluation for TB disease. If there is no evidence of disease, persons with TB infection should be considered for preventive therapy. Preventive therapy shall be conducted in accordance with the incorporated publication, Treatment of TB and TB Infection.

- 1) Skin Test Reaction Equal to or Greater Than 5 mm. Persons (regardless of age) with a Mantoux skin test reaction equal to or greater than 5 millimeters (mm) induration should be considered high-priority candidates for preventive therapy when they are suspected or known to have HIV/AIDS, are close contacts of a person with infectious TB disease, or have chest radiograph findings suggestive of previous TB, and when they are known to have received inadequate or no previous treatment for TB disease.

2) Skin Test Reaction Less Than 5 mm. In certain instances, close contacts with Mantoux skin test reactions less than 5 mm induration should receive a chest radiograph and be considered for preventive therapy (e.g., the contact is a child or an adolescent or the contact is immunosuppressed). Contacts with HIV/AIDS should be considered for preventive therapy, regardless of Mantoux skin test results. (See the incorporated publication, Core Curriculum.)

3) Positive Skin Test Reaction in Persons in High-Risk Groups. All persons in high-risk groups should be considered for preventive therapy. (See the incorporated publication, Treatment of TB and TB Infection.)

- b) BCG Vaccine and Preventive Therapy. A diagnosis of TB infection and the use of preventive therapy should be considered for any

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

BCG-vaccinated person with a positive Mantoux skin test reaction. (See the incorporated publication, The Role of BCG Vaccine.)

- c) Directly Observed Preventive Therapy (DOPT). In settings where DOPT can be given by a responsible and trained employee or volunteer, twice-a-week DOPT should be considered. DOPT should especially be considered for persons who are at high-risk for TB disease, or at high-risk of nonadherence to preventive therapy.
- d) Monitoring for Adverse Reactions. At a minimum, patients should be seen monthly during therapy and evaluated for adverse drug reactions.

### Section 696.160 Diagnosis and Management of Persons with Suspected or Confirmed Tuberculosis Disease

- a) Diagnostic Evaluation. The evaluation in persons with suspected or confirmed TB disease shall include but not be limited to:

- 1) Medical History;
- 2) Physical Examination;
- 3) Mantoux Skin Test;
- 4) Chest Radiograph; and
- 5) Bacteriologic Examinations on Available Specimens (e.g., smears, cultures and other tests for M. tuberculosis, and drug susceptibility tests).

Agency note: TB is sometimes overlooked in the differential diagnosis of pulmonary conditions (e.g., pneumonia), especially in the elderly.

b) Clinical Management of Persons with Suspected or Confirmed TB Disease.

- 1) Infection Control Measures. If infectious TB disease is suspected, precautions shall be taken to prevent transmission in accordance with the incorporated publications: Guidelines for Healthcare Facilities; Core Curriculum; and OSHA Instruction.

A) In settings that serve infectious TB patients, precautions that shall be implemented include early identification and isolation of patients with suspected or confirmed TB disease. Infection control measures shall be maintained until it is determined that the patient is noninfectious.

- i) Precautions shall include the use of ventilation systems in TB isolation rooms to maintain negative pressure and to exhaust air.
- ii) Personal respirators that meet the requirements in the incorporated publication, OSHA Instruction, shall be used by workers in areas (e.g., TB isolation rooms, rooms where cough inducing procedures are done) where exposure cannot be avoided or there is an increased risk of exposure. Patients may be masked with a surgical mask if they must leave the isolation room while they are infectious and coughing.
- iii) In in-patient settings, continuous isolation should be considered for patients with multidrug-resistant TB.

- B) Subject to medical approval, infectious TB patients may be

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

confined to their homes in order to prevent transmission of disease. Personal respirators that meet the requirements in the incorporated publication, OSHA Instruction, shall be used by workers when in the homes of patients with infectious TB and when transporting infectious patients.

- C) Once determined to be infectious, a person is considered infectious until medically determined to be noninfectious and likely to not become infectious again, as evidenced by compliance with a multiple-drug treatment regimen to which the organisms are susceptible. When a consensus cannot be reached concerning infectiousness or noninfectiousness of a suspected or confirmed case of TB, a final decision of infectiousness or noninfectiousness will be made only by the Department.

- 2) Treatment of Suspected or Confirmed TB Disease. Suspected or confirmed TB disease shall be treated with multiple drugs in accordance with the incorporated publication, Treatment of TB and TB Infection.

Agency Note: TB disease in infants and children younger than four years of age and in immunosuppressed individuals (such as HIV/AIDS patients) is much more likely to spread throughout the body; prompt and vigorous treatment is appropriate as soon as TB is suspected.

- A) Directly Observed Therapy (DOT). Treatment of all patients with TB should be conducted by DOT.

- B) Monitoring for Response to Antituberculosis Chemotherapy. Persons with M. tuberculosis identified in sputum shall be monitored by sputum smears and cultures until conversion is documented. Drug susceptibility testing shall be done initially on culture positive specimens.

- i) Sputum smears should be repeated until 3 consecutive negative sputum smear results are obtained from sputum collected on different days.
- ii) Sputum cultures should be monitored at least monthly until negative cultures are obtained. Patients whose cultures have not become negative or whose symptoms do not resolve after two months of therapy shall be reevaluated for drug-resistant disease, as well as for failure to adhere to the regimen. For patients receiving self-administered therapy, the remainder of treatment should be directly observed.
- iii) In patients with multidrug-resistant disease, sputum cultures should be monitored monthly for the entire course of treatment.

- C) Monitoring for Adverse Reactions. Adults treated for TB disease should have baseline tests to detect any abnormality that would complicate treatment or require a modified regimen. At a minimum, patients should be seen monthly



DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

for nonadherence to a prescribed treatment regimen, and past or present behavior that indicates a substantial likelihood of not cooperating with prevention and control measures.

- C) Surveillance Information. Reportable demographic and locating information regarding the suspected or confirmed case of TB should include the name, address, date of birth, gender, race, ethnic origin, country of origin, month and year the person arrived in the United States, if applicable, non-prescribed drug use and excess alcohol use within the year before the date of the application, occupation, address changes, names and addresses of close contacts, and other information required to complete the tuberculosis reporting form of the Department and the Centers for Disease Control and Prevention, the Report of Verified Case of TB (RVCT) form.

- D) Other Information. Any other relevant information requested by the local TB control authority or the Department should be provided. Such information may include hospital discharge plans for out-patient follow-up and locating information for persons with TB infection.

- b) Reports to the Department from Local TB Control Authorities. Local TB control authorities shall report to the Department on the diagnosis, clinical management and surveillance of suspected and confirmed cases of TB and the investigation of contacts, as follows. The local TB control authority shall make their records available for inspection by the Department when requested in order to carry out the provisions of this Part.

- 1) Reports of Suspected or Confirmed Cases of TB. Within 7 calendar days after a local TB control authority's receipt of a report of a suspected or confirmed case of TB, the Department shall receive available information on an RVCT form.

- 2) Reports Due Within 30 Calendar Days After the Department's Request for Information. The Department shall be notified of the status of drug susceptibility test results, contact investigation information, case completion of therapy and other relevant information within 30 calendar days after the Department's request for information.

- c) Reports from Laboratories. Within 1 calendar day after obtaining results, laboratories shall report to the primary healthcare provider, local TB control authority and the Department smears positive for acid-fast bacilli, cultures or other tests positive for M. tuberculosis, and drug susceptibility test results.

- d) Confidentiality.

- 1) It is the policy of the Department to maintain the confidentiality of information that would identify individual patients.

- 2) Whenever any statute of this State or any ordinance or resolution of a municipal corporation or political subdivision enacted

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

during treatment and evaluated for adverse reactions. If symptoms suggest adverse reactions, vision, hearing, or blood tests should be performed. (See the incorporated publication, Core Curriculum, for recommendations for monitoring children for adverse reactions.)

- c) Contact Investigation. Close contacts to suspected or confirmed cases of TB disease shall be tested with the Mantoux skin test to identify infection. Close contacts shall be retested 3 months after the last exposure if their reaction to the first skin test was negative. A high priority should be given to evaluating contacts who are children or contacts infected with HIV/AIDS.

Section 696.170 Reporting

Health professionals listed in subsection (a)(1) shall report suspected and confirmed cases of TB to the local TB control authority or, in the absence of a local TB control authority, to the TB Control Section of the Department. The local TB control authority shall report to the Department.

- a) Reports to the Local TB Control Authority.

- 1) Health Professionals Required to Report. Reports shall be made by physicians, physician assistants, nurses, dentists, laboratory personnel and the health coordinator of settings serving high-risk groups to the local TB control authority or, in the absence of a local TB control authority, to the TB Control Section of the Department.

- 2) Report Forms and Transmission of Reports. Reports of suspected and confirmed cases of TB shall be made on forms available from the local TB control authority or the Department. To facilitate prompt reporting, telephone or facsimile reports are acceptable if followed by a written report sent through the mail.

- 3) Reports of Suspected and Confirmed Cases of TB. Persons required to report under subsection (a)(1) of this Section (except for laboratory personnel) shall, within 7 calendar days after the diagnosis of a suspected or confirmed case of TB, notify the local TB control authority of the following:

- A) Diagnosis. Information shall be provided about the diagnosis of a suspected or confirmed case of TB, including the dates and results in millimeters of Mantoux skin tests and the results of bacteriologic examinations and chest radiographs. When an apparent occurrence of TB does not have laboratory confirmation or meet the clinical case definition, the local TB control authority should consult with the Department.

- B) Clinical Management Information. Information shall be provided about the clinical management of a suspected or confirmed case of TB, including the determination of the infectious or noninfectious status, isolation precautions taken, treatment regimen, whether the client is at high-risk

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

pursuant to statute or any rule of an administrative agency adopted pursuant to statute requires medical practitioners or other persons to report cases of tuberculosis to any governmental agency or officer, such reports shall be confidential, and any medical practitioner or other person making such report in good faith shall be immune from suit for slander or libel based upon any statements contained in such report. The identity of any individual contained in a report of tuberculosis or an investigation conducted pursuant to a report of tuberculosis shall be confidential and such identity shall not be disclosed publicly in any action of any kind in any court or before any tribunal, board or agency. (Communicable Disease Report Act [745 ILCS 45])

SUBPART C: ENFORCEMENT OF TUBERCULOSIS PREVENTION  
AND CONTROL MEASURES

**Section 696.180 Role of the Department in Enforcement**

After providing an opportunity for a patient to present information to support his or her position at a hearing, the Department may issue directives and seek court orders, as necessary to protect the public health, safety and welfare.

- a) Opportunity to be Heard. Prior to issuance of any directive, the Department shall notify the prospective recipient of the directive of the intent to issue a directive and shall offer the recipient an opportunity to be heard before the Director or a designee, provided that within 7 days after receipt of the notice the recipient makes written request for hearing. The notice shall be in writing, shall be served in person or by certified mail, and shall include a brief description of the reasons for issuance of a directive and of the type of directive that may be issued. Any hearing under this Section shall be promptly scheduled and determined.

- b) Directives. When it is necessary to protect the public health, safety and welfare, the Department may ensure prevention and control measures by issuing Department directives. A directive is a letter that informs recipients what is required of them in order to be in compliance with this Part and the consequences of noncompliance. A directive may include one or more types of directives, as appropriate to the case. (See Sections 696.200 and 696.210.)
- c) Court Orders. The Department may seek court orders for diagnostic evaluation, preventive therapy, DOT, disease treatment, and isolation.

**Section 696.190 Role of the Local Tuberculosis Control Authority in Enforcement**

After providing an opportunity for a patient to present information to support his or her position at a hearing, the local TB control authority may issue

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

directives and seek court orders, as necessary to protect the public health, safety and welfare.

- a) Opportunity to be Heard. Prior to issuance of any directive, the local TB control authority shall notify the prospective recipient of the directive of the intent to issue a directive and shall offer the recipient an opportunity to be heard before the administrator of the local TB control authority or a designee, provided that within 7 days after receipt of the notice the recipient makes written request for hearing. The notice shall be in writing, shall be served in person or by certified mail, and shall include a brief description of the reasons for issuance of a directive and of the type of directive which may be issued. Any hearing under this Section shall be promptly scheduled and determined.

- b) Directives. When it is necessary to protect the public health, safety and welfare, the local TB control authority may ensure prevention and control measures by issuing directives. A directive is a letter that informs recipients what is required of them in order to be in compliance with this Part and the consequences of noncompliance. A directive may include one or more types of directives, as appropriate to the case. (See Sections 696.200 and 696.210.)

- c) Court Orders. The local TB control authority may seek court orders for diagnostic evaluation, preventive therapy, DOT, disease treatment, DOT and isolation.

- d) Notification. The local TB control authority shall inform the Department regarding persons in their jurisdiction meeting the description of potential recipients of directives, as specified in Section 696.210.

- e) Documentation. The local TB control authority shall document evidence (e.g., appointment logs, patient records) concerning the circumstances, as specified in Section 696.210, that make it necessary to seek directives or court orders. Upon the request of the Department, the local TB control authority shall provide such evidence to the Department.

**Section 696.200 Types of Directives**

- a) Initiation or Completion of the Diagnostic Evaluation. This directive requires the initiation or completion of the diagnostic evaluation for TB infection or disease in accordance with the following incorporated publications: Core Curriculum and Guidelines for Healthcare Facilities. The diagnostic evaluation may include, but is not limited to, a medical history, physical examination, Mantoux skin test, chest radiograph and bacteriologic examinations.

- b) Preventive Therapy or Disease Treatment. This directive requires completion of a prescribed course of preventive therapy for TB infection or a prescribed course of treatment for TB disease, and bacteriologic or other tests needed to monitor response to treatment or adverse reactions in accordance with the following incorporated

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

## Section 696.APPENDIX A Mantoux Skin Testing Procedures

**Mantoux Skin Test.** The Mantoux skin test shall be used when identifying persons with infection, regardless of whether a BCG vaccination was received in the past. The Mantoux skin test is not contraindicated for persons who have been vaccinated with BCG. (See the incorporated publication, The Role of BCG Vaccine.) Multiple puncture tuberculin tests should not be used to determine whether a person has TB infection.

a) Administration. The Mantoux skin test shall be administered by a trained person in accordance with the incorporated publication, Core Curriculum.

b) Reading Reactions. Mantoux skin test reactions should be read 48 to 72 hours after administration and recorded in millimeters of induration in accordance with the incorporated publication, Core Curriculum. A positive reaction can be documented up to 1 week after the skin test was performed. A negative reaction shall not be documented beyond 72 hours after the skin test was performed. A trained HCW should read the test. The recipient of a skin test should not read his or her own skin test, even if the recipient is a trained HCW.

c) Interpreting Reactions. The millimeter reading for defining a positive reaction shall depend on a person's risk factors for TB. (See the incorporated publication, Core Curriculum, for further information about interpreting reactions in specific groups.)

Agency Note: Anergy. The absence of a reaction to the tuberculin skin test does not rule out the diagnosis of TB disease or infection. Anergy should be considered in immunosuppressed persons who have no reaction to the skin test.

d) Two-Step Testing. Testing of persons who will be retested periodically (such as persons at high risk of exposure to TB) and who do not have a documented negative skin test reaction during the preceding 12 months shall be done by two-step testing, except as provided for in Section 696.140(a)(2)(C). The first Mantoux skin test in two-step testing can be read from 48 hours to 7 days after the test is administered. If the reaction to the first test is positive, a person shall be considered infected. If the reaction to the first skin test is negative, a second test shall be administered 7 to 21 days after the first test was administered. The second test shall be read 48 to 72 hours after administration. (See Appendix B.)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

publication: Treatment of TB and TB Infection.

c) DOT or DOTT. This directive requires completion of a course of preventive therapy by DOT for infection or treatment by DOT for disease, in accordance with the following incorporated publications: Core Curriculum and Treatment of TB and TB Infection.

d) Isolation. This directive requires isolation, in accordance with Section 696.160(b)(1) and the incorporated publications, Core Curriculum, Guidelines for Healthcare Facilities, and the OSHA Instruction, for any person with suspected or confirmed TB disease who is considered to be infectious or likely to become infectious, according to the definitions in this Part.

## Section 696.210 Potential Recipients of Directives

The local TB control authority shall document information used to identify potential recipients of directives. The local TB control authority or the Department may identify potential recipients of directives. The local TB control authority may seek the cooperation of the Department to identify potential recipients of directives.

a) Potential Recipients Based Upon Past or Present Behavior. A potential recipient shall be any person who has, or is suspected of having, TB infection or disease and who has demonstrated, in the opinion of the local TB control authority or the Department, through past or present behavior that he or she has a substantial likelihood of:

- 1) not initiating or completing a diagnostic evaluation to determine if TB infection or disease is present;
- 2) transmitting, or being able to transmit, disease to others;
- 3) not participating in DOT for TB infection;
- 4) not participating in DOT for treatment of disease; or
- 5) not following disease isolation procedures.

b) Potential Recipients Based Upon Not Completing Treatment. A potential recipient shall be any person who has been reported to the local TB control authority or the Department as having TB disease and as not completing a prescribed course of treatment.

c) Potential Recipients Based Upon Being High-Risk for Nonadherence to a Prescribed Treatment Regimen. A potential recipient shall be any person who has a history of treatment nonadherence; whose treatment has failed (treatment failure); whose disease has relapsed; who uses alcohol or controlled substances; who has mental, emotional, or physical impairments that interfere with the ability to self-administer medications; who is a child or adolescent.



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED RULES

**Section 696. APPENDIX B Employees and Clients Required to Have a Mantoux Skin Test**

- a) Persons Who are Not Part of a Routine, Periodic Screening Program. New employees and new clients (required to have a Mantoux skin test) who are not part of a routine, periodic screening program are not required to have two-step testing. These persons shall receive a Mantoux skin test within 7 days after employment or admission. This requirement can be waived when documentation is available of a Mantoux skin test result read within 90 days before employment.
- b) Persons Who are Part of a Routine, Periodic Screening Program. New employees and new clients who are part of a routine, periodic screening program shall have two-step testing within 7 days after employment or admission. This requirement can be waived with documentation of:
- 1) Two or more negative Mantoux skin test results read within one year before employment/admission, with the most recent Mantoux skin test read within 90 days before employment/admission; or
  - 2) A negative Mantoux skin test result read within 1 year before employment/admission, provided that the employee shall then receive an additional Mantoux skin test within 7 days after employment/admission; or
  - 3) Negative two-step testing results read within 90 days before employment/admission; or
  - 4) Negative two-step testing results read within 1 year before employment/admission, followed by a negative Mantoux skin test result read within 90 days before employment/admission; or
  - 5) Negative two-step testing results read within 1 year before employment/admission, provided that the employee shall then receive an additional Mantoux skin test within 7 days after employment/admission.
- c) Employees Re-hired or Clients Re-admitted Within a 12-Month Period. Employees and clients sometimes leave a facility for a period of time and later return to that facility. These employees and clients, who have previously met skin testing requirements, may have the skin test requirements for new hires or new admissions waived if, indicated by a risk assessment and in the judgement of the program's medical director, these persons were at low risk of exposure to tuberculosis during their absence from the facility.
- d) Persons with Documentation of a Previous Positive Reaction. Repeat skin testing is not needed or required for persons with documentation of a previous positive reaction to a Mantoux skin test. (See Section 696.140(b)(1) for screening procedures for persons in routine, periodic skin testing programs.)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Intermediate Care for the Developmentally Disabled Facilities Code
  - 2) Code Citation: 77 Ill. Adm. Code 350
  - 3) Section Numbers: Proposed Action:  
350.315 New Section  
350.690 Amendments  
350.Table F Amendments
  - 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45] and implementing P.A. 89-530.
  - 5) A Complete Description of the Subjects and Issues Involved: The rules in Part 350 regulate the licensure of intermediate care facilities for the developmentally disabled.
- Section 350.315 is being added to implement Public Act 89-530 (effective July 19, 1996), which amended the Illinois Act on the Aging, the Illinois Health Facilities Planning Act, and the Nursing Home Care Act to make changes in the Department on Aging's Supported Congregate Living Arrangement Demonstration Project. The amendment to the Nursing Home Care Act allows the Department of Public Health to grant waivers from the requirements of the Act for facilities participating in the supported congregate living arrangement demonstration project. The rule provides the information that must be included on a waiver application; references the criteria under which the application will be evaluated; and lists the circumstances under which the Department may revoke the waiver.
- Section 350.690 is being amended to revise requirements for disaster preparedness. A definition of "disaster" has been added. A written plan is required for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning. An established means of facility notification is required when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. Fire drills must be held at least quarterly, for each shift of personnel, and disaster drills for other than fire must be held twice annually, for each shift of personnel.
- Section 350.Table F has been replaced with a new heat index/apparent temperature chart from the National Oceanic and Atmospheric Administration.
- The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

- C) Types of Professional Skills Necessary for Compliance: None
- 13) Regulatory Agenda on which this rulemaking was included: July 1997
- The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the Illinois Register.

- 6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No
- 7) Does this Rulemaking Contain an Automatic Repeal Date? No
- 8) Does this Rulemaking Contain Any Incorporations By Reference? No
- 9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
350.625	New Section	21 Ill. Reg. 1798
350.681	Amendments	21 Ill. Reg. 3475
350.683	Amendments	21 Ill. Reg. 3475

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

- 11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Gail Devito  
Division of Governmental Affairs  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
217/782-6187

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. Devito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

- 12) Initial Regulatory Flexibility Analysis:

- A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Long-term care facilities
- B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER C: LONG-TERM CARE FACILITIES

## PART 350

## INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED FACILITIES CODE

## SUBPART A: GENERAL PROVISIONS

Section	
350.110	General Requirements
350.120	Application for License
350.130	Licensee
350.140	Issuance of an Initial License for a New Facility
350.150	Issuance of an Initial License Due to a Change of Ownership
350.160	Issuance of a Renewal License
350.165	Criteria for Adverse Licensure Actions
350.170	Denial of Initial License
350.175	Denial of Renewal of License
350.180	Revocation of License
350.190	Experimental Program Conflicting With Requirements
350.200	Inspections, Surveys, Evaluations and Consultation
350.210	Filing an Annual Attested Financial Statement
350.220	Information to Be Made Available to the Public By the Department
350.230	Information to Be Made Available to the Public By the Licensee
350.240	Municipal Licensing
350.250	Ownership Disclosure
350.260	Issuance of Conditional Licenses
350.270	Monitor and Receivership
350.271	Presentation of Findings
350.272	Determination to Issue a Notice of Violation or Administrative Warning
350.274	Determination of the Level of a Violation
350.276	Notice of Violation
350.277	Administrative Warning
350.278	Plans of Correction
350.280	Reports of Correction
350.282	Conditions for Assessment of Penalties
350.284	Calculation of Penalties
350.286	Determination to Assess Penalties
350.288	Reduction or Waiver of Penalties
350.290	Quarterly List of Violators
350.290	Alcoholism Treatment Programs In Long-Term Care Facilities
350.300	Department May Survey Facilities Formerly Licensed
350.310	Supported Congregate Living Arrangement Demonstration
350.315	Waivers
350.320	Definitions
350.330	Incorporated and Referenced Materials
350.340	

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART B: ADMINISTRATION

Section	
350.510	Administrator

## SUBPART C: POLICIES

Section	
350.610	Management Policies
350.620	Resident Care Policies
350.630	Admission and Discharge Policies
350.640	Contract Between Resident and Facility
350.650	Residents' Advisory Council
350.660	General Policies
350.670	Personnel Policies
350.675	Initial Health Evaluation for Employees
350.680	Developmental Disabilities Aides
350.681	Health Care Worker Background Check
350.683	Registry of Developmental Disabilities Aides
350.685	Student Interns
350.690	Disaster Preparedness
350.700	Serious Incidents and Accidents

## SUBPART D: PERSONNEL

Section	
350.810	Personnel
350.820	Consultation Services
350.830	Personnel Policies

## SUBPART E: RESIDENT LIVING SERVICES

Section	
350.1010	Service Programs
350.1020	Psychological Services
350.1030	Social Services
350.1040	Speech Pathology and Audiology Services
350.1050	Recreational and Activities Services
350.1060	Training and Habilitation Services
350.1070	Training and Habilitation Staff
350.1080	Restraints
350.1082	Nonemergency Use of Physical Restraints
350.1084	Emergency Use of Physical Restraints
350.1086	Unnecessary, Psychotropic and Antipsychotic Drugs

## SUBPART F: HEALTH SERVICES

Section	
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## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

350.1210 Health Services  
 350.1220 Physician Services  
 350.1225 Tuberculin Skin Test Procedures  
 350.1230 Nursing Services  
 350.1235 Life-Sustaining Treatments  
 350.1240 Dental Services  
 350.1250 Physical and Occupational Therapy Services

## SUBPART G: MEDICATIONS

Section  
 350.1410 Medication Policies and Procedures  
 350.1420 Conformance with Physician's Orders  
 350.1430 Administration of Medication  
 350.1440 Labeling and Storage  
 350.1450 Control of Narcotics and Legend Drugs

## SUBPART H: RESIDENT AND FACILITY RECORDS

Section  
 350.1610 Resident Record Requirements  
 350.1620 Content of Medical Records  
 350.1630 Confidentiality of Resident's Records  
 350.1640 Records Pertaining to Residents' Property  
 350.1650 Retention and Transfer of Resident Records  
 350.1660 Other Resident Record Requirements  
 350.1670 Staff Responsibility for Medical Records  
 350.1680 Retention of Facility Records  
 350.1690 Other Facility Record Requirements

## SUBPART I: FOOD SERVICE

Section  
 350.1810 Director of Food Services  
 350.1820 Dietary Staff in Addition to Director of Food Services  
 350.1830 Hygiene of Dietary Staff  
 350.1840 Diet Orders  
 350.1850 Adequacy of Diet and Meal Pattern  
 350.1860 Therapeutic Diets  
 350.1870 Scheduling Meals  
 350.1880 Menu Planning  
 350.1890 Food Preparation and Service  
 350.1900 Food Handling Sanitation  
 350.1910 Kitchen Equipment, Utensils, and Supplies

## SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

350.2010 Maintenance  
 350.2020 Housekeeping  
 350.2030 Laundry Services

## SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section  
 350.2210 Furnishings  
 350.2220 Equipment and Supplies

## SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section  
 350.2410 Codes  
 350.2420 Water Supply  
 350.2430 Sewage Disposal  
 350.2440 Plumbing

## SUBPART M: CONSTRUCTION STANDARDS FOR NEW INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section  
 350.2610 Applicability of These Standards  
 350.2620 Codes and Standards  
 350.2630 Preparation of Drawings and Specifications  
 350.2640 Site  
 350.2650 Administration and Public Areas  
 350.2660 Nursing Unit  
 350.2670 Dining, Living, Activities Rooms  
 350.2680 Therapy and Personal Care  
 350.2690 Service Departments  
 350.2700 General Building Requirements  
 350.2710 Structural  
 350.2720 Mechanical Systems  
 350.2730 Plumbing Systems  
 350.2740 Electrical Systems

## SUBPART N: CONSTRUCTION STANDARDS FOR EXISTING INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Section  
 350.2910 Applicability  
 350.2920 Codes and Standards  
 350.2930 Preparation of Drawings and Specifications  
 350.2940 Site  
 350.2950 Administration and Public Areas  
 350.2960 Nursing Unit  
 350.2970 Living, Dining, Activities Rooms

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

350.2980 Treatment and Personal Care  
 350.2990 Service Departments  
 350.3000 General Building Requirements  
 350.3010 Structural  
 350.3020 Mechanical Systems  
 350.3030 Plumbing Systems  
 350.3040 Electrical Requirements

## SUBPART O: RESIDENT'S RIGHTS

Section  
 350.3210 General  
 350.3220 Medical and Personal Care Program  
 350.3230 Restraints  
 350.3240 Abuse and Neglect  
 350.3250 Communication and Visitation  
 350.3260 Resident's Funds  
 350.3270 Residents' Advisory Council  
 350.3280 Contract With Facility  
 350.3290 Private Right of Action  
 350.3300 Transfer or Discharge  
 350.3310 Complaint Procedures  
 350.3320 Confidentiality  
 350.3330 Facility Implementation

SUBPART P: SPECIAL STANDARDS FOR INTERMEDIATE CARE FACILITIES  
FOR THE DEVELOPMENTALLY DISABLED OF 16 BEDS OR LESS

Section  
 350.3710 Applicability of Other Provisions of this Part  
 350.3720 Administration  
 350.3730 Admission and Discharge Policies  
 350.3740 Personnel  
 350.3750 Consultation Services and Nursing Services  
 350.3760 Medication Policies  
 350.3770 Food Services  
 350.3780 Codes and Standards  
 350.3790 Administration and Public Areas  
 350.3800 Bedrooms  
 350.3810 Nurses Station  
 350.3820 Bath and Toilet Rooms  
 350.3830 Utility Rooms  
 350.3840 Living, Dining, Activity Rooms  
 350.3850 Therapy and Personal Care  
 350.3860 Kitchen  
 350.3870 Laundry Room  
 350.3880 General Building Requirements  
 350.3890 Corridors

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

350.3900 Special Care Room  
 350.3910 Exit Facilities and Subdivision of Floor Areas  
 350.3920 Stairways, Vertical Openings and Doorways  
 350.3930 Hazardous Areas and Combustible Storage  
 350.3940 Mechanical Systems  
 350.3950 Heating, Cooling, and Ventilating Systems  
 350.3960 Plumbing Systems  
 350.3970 Electrical Systems  
 350.3980 Fire Alarm and Detection System  
 350.3990 Emergency Electrical System  
 350.4000 Fire Protection  
 350.4010 Construction Types  
 350.4020 Equivalencies  
 350.4030 New Construction Requirements

## SUBPART Q: DAY CARE PROGRAMS

Section  
 350.4210 Day Care in Long-Term Care Facilities

APPENDIX A Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)  
 APPENDIX B Federal Requirements Regarding Residents' Rights  
 APPENDIX C Seismic Zone Map  
 APPENDIX D Forms for Day Care in Long-Term Care Facilities  
 APPENDIX E Guidelines for the Use of Various Drugs  
 TABLE A Sound Transmission Limitations in New Intermediate Care Facilities for the Developmentally Disabled  
 TABLE B Pressure Relationships and Ventilation Rate of Certain Areas for the New Intermediate Care Facilities for the Developmentally Disabled  
 TABLE C Construction Types and Sprinkler Requirements for Existing Intermediate Care Facilities for the Developmentally Disabled  
 TABLE D Food Service Sanitation Rules and Regulations, 77 Ill. Adm. Code 750, 1983 Applicable for New Intermediate Care Facilities for the Developmentally Disabled of Sixteen (16) Beds or Less  
 TABLE E Construction Types and Sprinkler Requirements for New Intermediate Care Facilities for the Developmentally Disabled of Sixteen (16) Beds or Less

TABLE F Heat Index Table/Apparent Temperature  
 Parameters---Relative-Humidity-and-Temperature  
 Disaster---Preparedness

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 495, effective March 1, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 30, p. 1, effective July 28, 1980; amended at 5 Ill. Reg. 1657, effective February 4, 1981; amended

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

4.02b of the Illinois Act on the Aging [20 ILCS 105/4.02b] and requesting a waiver of the Act and this Part shall submit to the Department a joint waiver request with the Department on Aging or documentation that the Department on Aging failed to act upon a waiver application within 60 days after the applicant submitted a request to the Department on Aging [Section 4.02b of the Illinois Act on the Aging].

b) The waiver application shall include the following:

- 1) a specific listing of those portions of the Act and this Part for which a waiver is being requested; and
- 2) the applicant's proposed Program Plan.

c) The proposed Program Plan shall describe the types of residents to be served and the services that will be provided in the Supported Congregate Living Arrangement Demonstration. (Section 3-102.2 of the Act)

d) The Department will evaluate the waiver application based on the criteria in Section 350.320 of this Part. The applicant shall be notified within 10 days after the Department's waiver determination.

e) The Department may revoke the waiver if the Department determines that the Supported Congregate Living Arrangement Demonstration:

- 1) is not in compliance with the Program Plan submitted in accordance with subsection (b) of this Section (Section 3-102.2 of the Act);
- 2) is not in compliance with the Department's waiver approval conditions; or
- 3) has been terminated from the demonstration by the Department on Aging.

(Source: Added at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART C: POLICIES

Section 350.690 Disaster Preparedness

- a) For the purpose of this Section only, "disaster" means an occurrence, as a result of a natural force or mechanical failure such as water, wind or fire, or a lack of essential resources such as electrical power, that poses a threat to the safety and welfare of residents, personnel, and others present in the facility.
- b) Each facility shall have policies covering disaster preparedness, including a written plan for staff, and residents and others to follow in case of fire, explosion, severe weather, or other hazardous circumstances and emergencies. The plan shall be rehearsed at least twice a year for each shift. The plan shall include, but is not be limited to, the following: (b)
- 1) All personnel employed on the premises shall be properly instructed in the use of fire extinguishers. (b)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6453, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14544, effective November 8, 1982; amended at 6 Ill. Reg. 14675, effective November 15, 1982; amended at 6 Ill. Reg. 15556, effective December 15, 1982; amended at 7 Ill. Reg. 278, effective December 22, 1982; amended at 7 Ill. Reg. 1919 and 1945, effective January 28, 1993; amended at 7 Ill. Reg. 7963, effective July 1, 1983; amended at 7 Ill. Reg. 15817, effective November 15, 1983; amended at 7 Ill. Reg. 16984, effective December 14, 1983; amended at 8 Ill. Reg. 15574 and 15578 and 15581, effective August 15, 1984; amended at 8 Ill. Reg. 15935, effective August 17, 1984; amended at 8 Ill. Reg. 16980, effective September 5, 1984; codified at 8 Ill. Reg. 19806; amended at 8 Ill. Reg. 24214, effective November 29, 1984; amended at 8 Ill. Reg. 24680, effective December 7, 1984; amended at 9 Ill. Reg. 142, effective December 26, 1984; amended at 9 Ill. Reg. 331, effective December 28, 1984; amended at 9 Ill. Reg. 2964, effective February 25, 1985; amended at 9 Ill. Reg. 10876, effective July 1, 1985; amended at 11 Ill. Reg. 14795, effective October 1, 1987; amended at 11 Ill. Reg. 16830, effective October 1, 1987; amended at 12 Ill. Reg. 979, effective December 24, 1987; amended at 12 Ill. Reg. 16838, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18705, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6040, effective April 17, 1989; amended at 13 Ill. Reg. 19451, effective December 1, 1989; amended at 14 Ill. Reg. 14876, effective October 1, 1990; amended at 15 Ill. Reg. 466, effective January 1, 1991; amended at 16 Ill. Reg. 594, effective January 1, 1992; amended at 16 Ill. Reg. 13910, effective September 1, 1992; amended at 17 Ill. Reg. 2351, effective February 10, 1993; emergency amendment at 17 Ill. Reg. 2373, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7948, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; emergency amendment at 17 Ill. Reg. 9105, effective June 7, 1993, for a maximum of 150 days; emergency expired on November 4, 1993; amended at 17 Ill. Reg. 15056, effective September 3, 1993; amended at 17 Ill. Reg. 16153, effective January 1, 1994; amended at 17 Ill. Reg. 19210, effective October 26, 1993; amended at 17 Ill. Reg. 19517, effective November 4, 1993; amended at 17 Ill. Reg. 21017, effective November 20, 1993; amended at 18 Ill. Reg. 1432, effective January 14, 1994; amended at 18 Ill. Reg. 15789, effective October 15, 1994; amended at 19 Ill. Reg. 11481, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 512, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10065, effective July 15, 1996; amended at 20 Ill. Reg. 12049, effective September 10, 1996, amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

Section 350.315 Supported Congregate Living Arrangement Demonstration

- a) A facility or location approved to participate in the Supported Congregate Living Arrangement Demonstration authorized by Section



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 2) A diagram written plan of the evacuation route shall be posted, and made familiar to all personnel employed on the premises.
- 3) A written plan shall be developed for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning. Each facility must conduct at least four fire drills annually on each shift for a total of 12 drills. At least one of these drills on each shift must include actual evacuation of residents to safe areas. The local fire authorities should be requested to assist periodically in these drills.
- 4) There shall be an established means of facility notification when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. The notification mechanism must be other than commercial radio or television. Approved notification measures include being within range of local tornado warning sirens, an operable National Oceanic and Atmospheric Administration weather radio in the facility or arrangements with local public safety agencies (police, fire, ESDA) to be notified if a warning is issued.
- c) Fire drills shall be held at least quarterly for each shift of facility personnel. Disaster drills for other than fire shall be held twice annually for each shift of facility personnel. Drills shall be held under varied conditions to:
- 1) Ensure that all personnel on all shifts are trained to perform assigned tasks;
  - 2) Ensure that all personnel on all shifts are familiar with the use of the fire fighting equipment in the facility; and
  - 3) Evaluate the effectiveness of disaster plans and procedures.
- d) Fire drills shall include simulation of evacuation of residents to safe areas during at least one drill each year on each shift.
- e) There shall be special provisions for the evacuation of physically handicapped persons, including those who are hearing or sight impaired.
- f) Where the welfare of the residents precludes an actual evacuation of an entire building, there must be drills involving the evacuation of successive portions of the building under such conditions as to assure the capability of evacuating the entire building with the personnel usually available, should the need arise.
- g) A written evaluation of each drill shall be submitted to the facility administrator and shall be maintained for one year.
- h) A written plan shall be developed for temporarily relocating the residents for any disaster requiring relocation and any time the temperature in residents' bedrooms falls below 55° F. for 12 hours or more.
- i) Reporting of Disasters Emergencies
- 1) Upon the occurrence of any emergency--or disaster requiring hospital service, police, fire department or coroner, the

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- facility administrator or their designee must provide a preliminary report to the Department utilizing either by using the nursing home hotline or by contacting directly contacting the appropriate Department Regional Office during business hours. This preliminary report shall include, at a minimum:
- A) name Name and location of facility;
  - B) type of disaster emergency;
  - C) number of injuries or deaths to residents;
  - D) number of beds not usable due to the occurrence event;
  - E) estimate of the extent of damages to the facility;
  - F) type of assistance needed, if any;
  - G) other State state or local agencies notified about the problem.
- 2) If the disaster emergency will not require direct Departmental assistance, the facility shall provide the preliminary report within 24 hours after of the occurrence incident. Additionally, the facility shall submit Department shall receive a full written account to the Department within seven days after the occurrence, of--the--incident which includes the information specified in subsection (i)(1) subsections--(b)(1)(A) through--(b)(1)(G) of this Section and a statement of action taken by the facility after the preliminary report.
- j) Each facility shall establish and implement policies and procedures in a written plan to provide for the health, safety, welfare and comfort of all residents when the heat index/apparent temperature, as established by the National Oceanic and Atmospheric Administration (see Section 350. Table F), inside the residents' living, dining, activities, or sleeping areas of the facility exceeds a heat index/apparent temperature of 80° F. whenever--the--temperature--and relative--humidity--inside--the--residents--living--dining--activities--or sleeping--areas--of--the--facility--are--equal--to--or--exceed--the--upper--or tower--limit--lines--(the--solid--lines)--of--the--chart--Jones--of Physiologic Perception--displayed in Table F--Disaster-Preparedness Parameters--Relative-Humidity-and-Temperature--(A,B)

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Air Temperature (degrees Fahrenheit)

Air Temperature (degrees Fahrenheit)

	70	75	80	85	90	95	100	105	110	115	120	125	130	135
5	64	69	74	79	84	88	93	97	102	107	111	116	122	128
10	65	70	75	80	85	90	95	100	105	111	116	123	131	
15	65	71	76	81	86	91	97	102	108	115	123	131		
20	66	72	77	82	87	93	99	105	112	120	130	141		
25	66	72	77	83	88	94	101	109	117	127	139			
30	67	73	78	84	90	96	104	113	123	135	148			
35	67	73	79	85	91	98	107	118	130	143				
40	68	74	79	86	93	101	110	123	137	151				
45	68	74	80	87	95	104	115	129	143					
50	69	75	81	88	96	107	120	135	150					
55	69	75	81	89	98	110	126	142						
60	70	76	82	90	100	114	132	149						
65	70	76	83	91	102	119	138							
70	70	77	85	93	106	124	144							
75	70	77	86	95	109	130								
80	71	78	86	97	113	136								
85	71	78	87	99	117									
90	71	79	88	102	122									
95	71	79	89	105										

(Relative Humidity Percent)

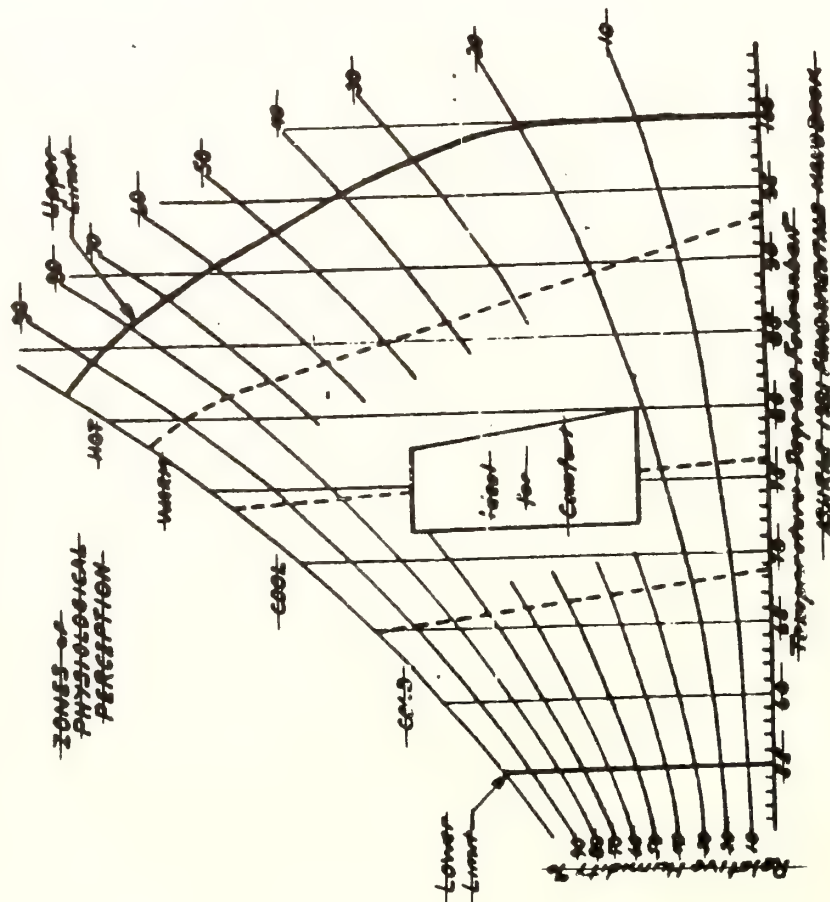
(Table is from the National Oceanic and Atmospheric Administration)

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

(Table is from the National Oceanic and Atmospheric Administration)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Section 350. TABLE F Heat Index Table/Apparent Temperature Disaster Preparedness-Parameters-Relative-Humidity-and-Temperature



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Long-Term Care for Under Age 22 Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 390
- 3) Section Numbers: Proposed Action:  
390.315 New Section  
390.690 Amendments  
390.Table F Amendments
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45] and implementing P.A. 89-530.

5) A Complete Description of the Subjects and Issues Involved: The rules in Part 390 regulate the licensure of long-term care facilities for persons under age 22.

Section 390.315 is being added to implement Public Act 89-530 (effective July 19, 1996), which amended the Illinois Act on the Aging, the Illinois Health Facilities Planning Act, and the Nursing Home Care Act to make changes in the Department on Aging's Supported Congregate Living Arrangement Demonstration Project. The amendment to the Nursing Home Care Act allows the Department of Public Health to grant waivers from the requirements of the Act for facilities participating in the Supported Congregate Living Arrangement Demonstration Project. The rule provides the information that must be included on a waiver application; references the criteria under which the application will be evaluated; and lists the circumstances under which the Department may revoke the waiver.

Section 390.690 is being amended to revise requirements for disaster preparedness. A definition of "disaster" has been added. A written plan is required for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning. An established means of facility notification is required when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. Fire drills must be held at least quarterly, for each shift of personnel, and disaster drills for other than fire must be held twice annually, for each shift of personnel.

Section 390.Table F has been replaced with a new heat index/apparent temperature chart from the National Oceanic and Atmospheric Administration.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None

C) Types of Professional Skills Necessary for Compliance: None

13) Regulatory Agenda on which this rulemaking was included: July 1997

The full text of the Proposed Amendments begins on the next page:

6) to nine months after publication of the notice in the Illinois Register.

7) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

8) Does this Rulemaking Contain an Automatic Repeal Date? No

9) Does this Rulemaking Contain Any Incorporations By Reference? No

10) Are there any other Proposed Amendments Pending on this Part? Yes

If Yes:

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
390.681	Amendments	21 Ill. Reg. 3497
390.683	Amendments	21 Ill. Reg. 3497

11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

12) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking:

Interested persons may present their comments concerning these rules by writing:

Ms. Gail M. DeVito  
Division of Governmental Affairs  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-6187

within 45 days after this issue of the Illinois Register.

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

13) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: long-term care facilities

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 390

## LONG-TERM CARE FOR UNDER AGE 22 FACILITIES CODE

## SUBPART A: GENERAL PROVISIONS

Section	
390.110	General Requirements
390.120	Application for License
390.130	Licensee
390.140	Issuance of an Initial License for a New Facility
390.150	Issuance of an Initial License Due to a Change of Ownership
390.160	Issuance of a Renewal License
390.165	Criteria for Adverse Licensure Actions
390.170	Denial of Initial License
390.175	Denial of Renewal of License
390.180	Revocation of License
390.190	Experimental Program Conflicting With Requirements
390.200	Inspections, Surveys, Evaluations and Consultation
390.210	Filing an Annual Attested Financial Statement
390.220	Information to be Made Available to the Public by the Department
390.230	Information to Be Made Available to the Public By the Licensee
390.240	Municipal Licensing
390.250	Ownership Disclosure
390.260	Issuance of Conditional Licenses
390.270	Monitor and Receivership
390.271	Presentation of Findings
390.272	Determination to Issue a Notice of Violation or Administrative Warning
390.274	Determination of the Level of a Violation
390.276	Notice of Violation
390.277	Administrative Warning
390.278	Plans of Correction
390.280	Reports of Correction
390.282	Conditions for Assessment of Penalties
390.284	Calculation of Penalties
390.286	Determination to Assess Penalties
390.288	Reduction or Waiver of Penalties
390.290	Quarterly List of Violators
390.300	Alcoholism Treatment Programs in Long-Term Care Facilities
390.310	Department May Survey Facilities Formerly Licensed
390.315	Supported Congregate Living Arrangement Demonstration
390.320	Waivers
390.330	Definitions
390.340	Incorporated and Referenced Materials

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART B: ADMINISTRATION

Section	
390.500	Administrator

## SUBPART C: POLICIES

Section	
390.610	Management Policies
390.620	Resident Care Policies
390.630	Admission and Discharge Policies
390.640	Contract Between Resident and Facility
390.650	Residents' Advisory Council
390.660	General Policies
390.670	Personnel Policies
390.675	Initial Health Evaluation for Employees
390.680	Child Care/Habilitation Aides
390.681	Health Care Worker Background Check
390.683	Registry of Child Care/Habilitation Aides
390.685	Student Interns
390.690	Disaster Preparedness
390.700	Serious Incidents and Accidents

## SUBPART D: PERSONNEL

Section	
390.810	General
390.820	Categories of Personnel
390.830	Consultation Services

## SUBPART E: HEALTH AND DEVELOPMENTAL SERVICES

Section	
390.1010	Service Programs
390.1020	Medical Services
390.1025	Life-Sustaining Treatments
390.1030	Physician Services
390.1035	Tuberculin Skin Test Procedures
390.1040	Nursing Services
390.1050	Dental Care Services
390.1060	Physical and Occupational Therapy Services
390.1070	Psychological Services
390.1080	Social Services
390.1090	Speech Pathology and Audiology Services
390.1100	Recreational and Activity Services
390.1110	Educational Services
390.1120	Work Activity and Prevocational Training Services

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

SUBPART F: RESTRAINTS AND BEHAVIOR  
MANAGEMENT

Section  
 390.1310 Restraints  
 390.1312 Nonemergency Use of Physical Restraints  
 390.1314 Emergency Use of Physical Restraints  
 390.1316 Unnecessary, Psychotropic, and Antipsychotic Drugs  
 390.1320 Behavior Management  
 390.1330 Behavior Emergencies (Repealed)

## SUBPART G: MEDICATIONS

Section  
 390.1410 Medication Policies and Procedures  
 390.1420 Conformance with Physician's Orders  
 390.1430 Administration of Medication  
 390.1440 Labeling and Storage of Medications  
 390.1450 Control of Narcotics and Legend Drugs

## SUBPART H: RESIDENT AND FACILITY RECORDS

Section  
 390.1610 Resident Record Requirements  
 390.1620 Content of Medical Records  
 390.1630 Confidentiality of Resident's Records  
 390.1640 Records Pertaining to Residents' Property  
 390.1650 Retention and Transfer of Resident Records  
 390.1660 Other Resident Record Requirements  
 390.1670 Staff Responsibility for Medical Records  
 390.1680 Retention of Facility Records  
 390.1690 Other Facility Record Requirements

## SUBPART I: FOOD SERVICE

Section  
 390.1810 Director of Food Services  
 390.1820 Dietary Staff in Addition to Director of Food Services  
 390.1830 Hygiene of Dietary Staff  
 390.1840 Diet Orders  
 390.1850 Adequacy of Diet and Meal Pattern  
 390.1860 Infant and Therapeutic Diets  
 390.1870 Scheduling Meals  
 390.1880 Menu Planning  
 390.1890 Food Preparation and Service  
 390.1900 Preparation of Infant Formula  
 390.1910 Food Handling Sanitation  
 390.1920 Kitchen Equipment, Utensils, and Supplies

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART J: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

Section  
 390.2010 Maintenance  
 390.2020 Housekeeping  
 390.2030 Laundry Services

## SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section  
 390.2210 Furnishings  
 390.2220 Equipment and Supplies  
 390.2230 Sterilization of Supplies and Equipment

## SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

Section  
 390.2410 Codes  
 390.2420 Water Supply  
 390.2430 Sewage Disposal  
 390.2440 Plumbing

## SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW FACILITIES

Section  
 390.2610 Applicability of these Standards  
 390.2620 Codes and Standards  
 390.2630 Preparation of Drawings and Specifications  
 390.2640 Site  
 390.2650 Administration and Public Areas  
 390.2660 Nursing Unit  
 390.2670 Dining, Play, Activity/Program Rooms  
 390.2680 Therapy and Personal Care  
 390.2690 Service Departments  
 390.2700 General Building Requirements  
 390.2710 Structural  
 390.2720 Mechanical Systems  
 390.2730 Plumbing Systems  
 390.2740 Electrical Systems

## SUBPART N: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING FACILITIES

Section  
 390.2910 Applicability  
 390.2920 Codes and Standards  
 390.2930 Preparation of Drawings and Specifications  
 390.2940 Site  
 390.2950 Administration and Public Areas



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

390.2960 Nursing Unit  
 390.2970 Play, Dining, Activity/Program Rooms  
 390.2980 Treatment and Personal Care  
 390.2990 Service Department  
 390.3000 General Building Requirements  
 390.3010 Structural  
 390.3020 Mechanical Systems  
 390.3030 Plumbing Systems  
 390.3040 Electrical Requirements

## SUBPART O: RESIDENT'S RIGHTS

Section  
 390.3210 General  
 390.3220 Medical and Personal Care Program  
 390.3230 Restraints  
 390.3240 Abuse and Neglect  
 390.3250 Communication and Visitation  
 390.3260 Resident's Funds  
 390.3270 Residents' Advisory Council  
 390.3280 Contract With Facility  
 390.3290 Private Right of Action  
 390.3300 Transfer or Discharge  
 390.3310 Complaint Procedures  
 390.3320 Confidentiality  
 390.3330 Facility Implementation

## SUBPART P: DAY CARE PROGRAMS

Section  
 390.3510 Day Care in Long-Term Care Facilities

APPENDIX A Interpretation and Illustrative Services for Long-Term Care Facility for Residents Under 22 Years of Age  
 APPENDIX B Forms for Day Care in Long-Term Care Facilities  
 APPENDIX C Guidelines for the Use of Various Drugs  
 TABLE A Infant Feeding  
 TABLE B Daily Nutritional Requirements By Age Group  
 TABLE C Sound Transmissions Limitations  
 TABLE D Pressure Relationships and Ventilation Rates of Certain Areas for New Long-Term Care Facilities for Persons Under Twenty-Two (22) Years of Age

TABLE E Sprinkler Requirements  
 TABLE F Heat Index Table/Apparent Temperature  
 Parameters---Relative-Humidity-and-Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act (210 ILCS 451).

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

SOURCE: Adopted at 6 Ill. Reg. 1658, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 3223, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11622, effective September 14, 1982; amended at 6 Ill. Reg. 14557 and 14560, effective November 8, 1982; amended at 6 Ill. Reg. 14678, effective November 15, 1982; amended at 7 Ill. Reg. 282, effective December 22, 1982; amended at 7 Ill. Reg. 1927, effective January 28, 1983; amended at 7 Ill. Reg. 8574, effective July 11, 1983; amended at 7 Ill. Reg. 15821, effective November 15, 1983; amended at 7 Ill. Reg. 16988, effective December 14, 1983; amended at 8 Ill. Reg. 15585, 15589, and 15592, effective August 15, 1984; amended at 8 Ill. Reg. 16989, effective September 5, 1984; codified at 8 Ill. Reg. 19823; amended at 8 Ill. Reg. 24159, effective November 29, 1984; amended at 8 Ill. Reg. 24656, effective December 7, 1984; amended at 8 Ill. Reg. 25083, effective December 14, 1984; amended at 9 Ill. Reg. 122, effective December 26, 1984; amended at 9 Ill. Reg. 10785, effective July 1, 1985; amended at 11 Ill. Reg. 16782, effective October 1, 1987; amended at 12 Ill. Reg. 931, effective December 24, 1987; amended at 12 Ill. Reg. 16780, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18243, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6301, effective April 17, 1989; amended at 13 Ill. Reg. 19521, effective December 1, 1989; amended at 14 Ill. Reg. 14904, effective October 1, 1990; amended at 15 Ill. Reg. 1878, effective January 25, 1991; amended at 16 Ill. Reg. 623, effective January 1, 1992; amended at 16 Ill. Reg. 14329, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2390, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7974, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15073, effective September 3, 1993; amended at 17 Ill. Reg. 16167, effective January 1, 1994; amended at 17 Ill. Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 19547, effective November 4, 1993; amended at 17 Ill. Reg. 21031, effective November 20, 1993; amended at 18 Ill. Reg. 1453, effective January 14, 1994; amended at 18 Ill. Reg. 15807, effective October 15, 1994; amended at 19 Ill. Reg. 11525, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 535, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10106, effective July 15, 1996; amended at 20 Ill. Reg. 12101, effective September 10, 1996; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 390.315 Supported Congregate Living Arrangement Demonstration

a) A facility or location approved to participate in the Supported Congregate Living Arrangement Demonstration authorized by Section 4.02b of the Illinois Act on the Aging [20 ILCS 105/4.02b] and requesting a waiver of the Act and this Part shall submit to the Department a joint waiver request with the Department on Aging of documentation that the Department on Aging failed to act upon a waiver application within 60 days after the applicant submitted a request to

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

4) There shall be an established means of facility notification when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area within which the facility is located. The notification mechanism must be other than commercial radio or television. Approved notification measures include being within range of local tornado warning sirens, an operable National Oceanic and Atmospheric Administration weather radio in the facility or arrangements with local public safety agencies (police, fire, ESDA) to be notified if a warning is issued.

c) b) Fire and-disaster drills shall be held at least quarterly for each shift of facility personnel and-under-varied-conditions, in-order-to. Disaster drills for other than fire shall be held twice annually for each shift of facility personnel. Drills shall be held under varied conditions to:

- 1) Ensure that all personnel on all shifts are trained to perform assigned tasks;
  - 2) Ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment in the facility;
  - 3) Evaluate the effectiveness of disaster plans and procedures.
- d) 4) Fire and-disaster drills shall include simulation of evacuation of residents to safe areas during at least one drill each year on each shift.

e) 5) There shall be special provisions for the evacuation of the physically handicapped persons, including those who are hearing or sight impaired deaf-and-blind, such-as-fire-chutes-and-mattress-rooms-with-poles.

f) 6) Where the welfare of the residents precludes an actual evacuation of an entire building, there must be drills involving the evacuation of successive portions of the building under such conditions as to assure the capability of evacuating the entire building with the personnel usually available, should the need arise.

g) 7) A where-shall-be-a written evaluation of each drill shall be submitted to the facility administrator and which shall be maintained for one year three-years.

h) c) A written plan shall be developed for temporarily relocating the residents for any disaster emergency requiring relocation and any time the temperature in residents' bedrooms falls below 55° F. degrees Fahrenheit for 12 hours or more.

i) d) Reporting of Disasters Emergencies  
1) Upon the occurrence of any emergency--or disaster requiring hospital service, police, fire department or coroner, the facility administrator or their designee must provide a preliminary report to the Department utilizing either by using the nursing home hotline or by contacting directly contacting the appropriate Department Regional Office during business hours. This preliminary report shall include, at a minimum:  
A) name Name and location of facility;

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

the Department on Aging (Section 4.02b of the Illinois Act on the Aging).

b) The waiver application shall include the following:  
1) a specific listing of those portions of the Act and this Part for which a waiver is being requested; and

2) the applicant's proposed Program Plan.  
c) The proposed Program Plan shall describe the types of residents to be served and the services that will be provided in the Supported Congregate Living Arrangement Demonstration. (Section 3-102.2 of the Act)

d) The Department will evaluate the waiver application based on the criteria in Section 390.320 of this Part. The applicant shall be notified within 10 days after the Department's waiver determination. The Department may revoke the waiver if the Department determines that the Supported Congregate Living Arrangement Demonstration:

- 1) is not in compliance with the Program Plan submitted in accordance with subsection (b) of this Section (Section 3-102.2 of the Act);
- 2) is not in compliance with the Department's waiver approval conditions; or
- 3) has been terminated from the demonstration by the Department on Aging.

(Source: Added at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART C: POLICIES

Section 390.690 Disaster Preparedness

a) For the purpose of this Section only, "disaster" means an occurrence, as a result of a natural force or mechanical failure such as water, wind or fire, or a lack of essential resources such as electrical power, that poses a threat to the safety and welfare of residents, personnel, and others present in the facility.

b) 1) Each facility shall have policies covering disaster preparedness, including a written plan for staff, and residents and others to follow in--case-of-fire, explosion, severe-weather-or-other-hazardous circumstances-or-emergencies--the-plan-shall-be-rehearsed-at-least twice-a-year-for-each-shift. The plan shall include, but is not be limited to, the following: (b)

- 1) All personnel employed on the premises shall be properly instructed in the use of fire extinguishers. (b)
- 2) A diagram written-plan of the evacuation route shall be posted and made familiar to all personnel employed on the premises.
- 3) A written plan shall be developed for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- B) type of disaster emergency;  
 C) number of injuries or deaths to residents;  
 D) number of beds not usable due to the occurrence event;  
 E) estimate of the extent of damages to the facility;  
 F) type of assistance needed, if any;  
 G) other State state or local agencies notified about the problem.

2) If the disaster emergency will not require direct Departmental assistance, the facility shall provide the preliminary report within 24 hours after of the occurrence incident. Additionally, the facility shall submit Department-shall-receive a full written account to the Department within seven days after the occurrence of the incident which includes the information specified in subsection subsections-(d)(1)(A)-through-(d)(1)(G) of this Section and a statement of action taken by the facility after the preliminary report.

1) Each facility shall establish and implement policies and procedures in a written plan to provide for the health, safety, welfare and comfort of all residents when the heat index/apparent temperature (see Section 390. Table F), as established by the National Oceanic and Atmospheric Administration, inside the residents' living, dining, activities, or sleeping areas of the facility exceeds a heat index/apparent temperature of 80° F. whenever the temperature and relative humidity inside the residents living, dining, activities or sleeping areas of the facility are equal to or exceed the upper or lower limit lines (the solid lines) of the chart, "Gones of Psychological Preception" displayed in Table F, "Disaster Preparedness Parameters---Relative Humidity and Temperature" (A-B)

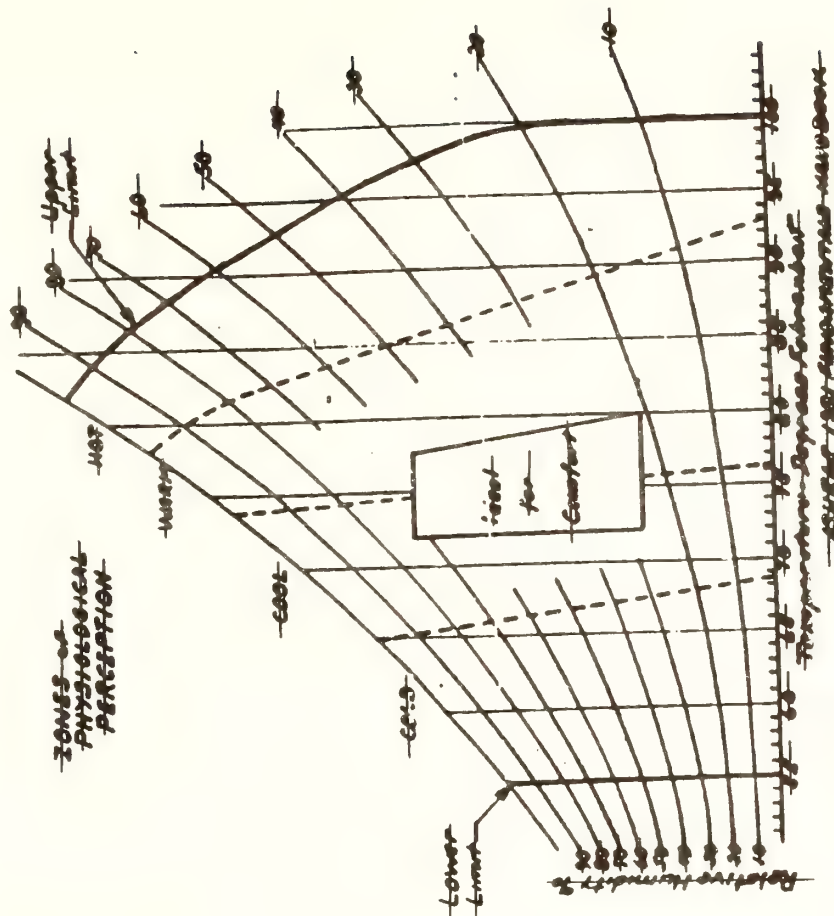
(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART P: DAY CARE PROGRAMS

Section 390. TABLE F Heat Index Table/Apparent Temperature Disaster Preparedness-Parameters-Relative-Humidity-and-temperature





DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Air Temperature (degrees Fahrenheit)

		Air Temperature (degrees Fahrenheit)															
		70	75	80	85	90	95	100	105	110	115	120	125	130	135		
5	64	69	74	79	84	88	93	97	102	107	111	116	122	128			
10	65	70	75	80	85	90	95	100	105	111	116	123	131				
15	65	71	76	81	86	91	97	102	108	115	123	131					
20	66	72	77	82	87	93	99	105	112	120	130	141					
25	66	72	77	83	88	94	101	109	117	127	139						
30	67	73	78	84	90	96	104	113	123	135	148						
35	67	73	79	85	91	98	107	118	130	143							
40	68	74	79	86	93	101	110	123	137	151							
45	68	74	80	87	95	104	115	129	143								
50	69	75	81	88	96	107	120	135	150								
55	69	75	81	89	98	110	126	142									
60	70	76	82	90	100	114	132	149									
65	70	76	83	91	102	119	138										
70	70	77	85	93	106	124	144										
75	70	77	86	95	109	130											
80	71	78	86	97	113	136											
85	71	78	87	99	117												
90	71	79	88	102	122												
95	71	79	89	105													

(Relative Humidity Percent)

(Table is from the National Oceanic and Atmospheric Administration)

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

(Table is from the National Oceanic and Atmospheric Administration)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Sheltered Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 330
- 3) Section Numbers:  
330.315 Proposed Action:  
330.770 New Section  
330.770 Amendments  
330. Table A Amendments
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45] and implementing P.A. 89-530.
- 5) A Complete Description of the Subjects and Issues Involved: The rules in Part 330 regulate the licensure of sheltered care facilities.

Section 330.315 is being added to implement Public Act 89-530 (effective July 19, 1996), which amended the Illinois Act on the Aging, the Illinois Health Facilities Planning Act, and the Nursing Home Care Act to make changes in the Department on Aging's Supported Congregate Living Arrangement Demonstration Project. The amendment to the Nursing Home Care Act allows the Department of Public Health to grant waivers from the requirements of the Act for facilities participating in the Supported Congregate Living Arrangement Demonstration Project. The rule provides the information that must be included on a waiver application; references the criteria under which the application will be evaluated; and lists the circumstances under which the Department may revoke the waiver.

Section 330.770 is being amended to revise requirements for disaster preparedness. A definition of "disaster" has been added. A written plan is required for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning. An established means of facility notification is required when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. Fire drills must be held at least quarterly, for each shift of personnel, and disaster drills for other than fire must be held twice annually, for each shift of personnel.

Section 330. Table A has been replaced with a new heat index/apparent temperature chart from the National Oceanic and Atmospheric Administration.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

- 6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No
- 7) Does this Rulemaking Contain an Automatic Repeal Date? No
- 8) Does this Rulemaking Contain Any Incorporations By Reference? No
- 9) Are there any other Proposed Amendments Pending on this Part? Yes
- Section Numbers Proposed Action Illinois Register Citation  
330.911 Amendments 21 Ill. Reg. 5313

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

- 11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
Division of Governmental Affairs  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
217/782-6187

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

- 12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Long-term care facilities

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None

C) Types of Professional Skills Necessary for Compliance: None

- 13) Regulatory Agenda on which this rulemaking was included: July 1997

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER C: LONG-TERM CARE FACILITIES

PART 330  
SHELTERED CARE FACILITIES CODE  
SUBPART A: GENERAL PROVISIONS

Section	
330.110	General Requirements
330.120	Application for License
330.130	Licensee
330.140	Issuance of an Initial License For a New Facility
330.150	Issuance of an Initial License Due to a Change of Ownership
330.160	Issuance of a Renewal License
330.165	Criteria for Adverse Licensure Actions
330.170	Denial of Initial License
330.175	Denial of Renewal of License
330.180	Revocation of License
330.190	Experimental Program Conflicting With Requirements
330.200	Inspections, Surveys, Evaluations and Consultation
330.210	Filing an Annual Attested Financial Statement
330.220	Information to be Made Available to the Public By the Department
330.230	Information to be Made Available to the Public By the Licensee
330.240	Municipal Licensing
330.250	Ownership Disclosure
330.260	Issuance of Conditional Licenses
330.270	Monitoring and Receivership
330.271	Presentation of Findings
330.272	Determination to Issue a Notice of Violation or Administrative Warning
330.274	Determination of the Level of a Violation
330.276	Notice of Violation
330.277	Administrative Warning
330.278	Plans of Correction
330.280	Reports of Correction
330.282	Conditions for Assessment of Penalties
330.284	Calculation of Penalties
330.286	Determination to Assess Penalties
330.288	Reduction or Waiver of Penalties
330.290	Quarterly List of Violators
330.300	Alcoholism Treatment Programs In Long-Term Care Facilities
330.310	Department May Survey Facilities Formerly Licensed
330.315	Supported Congregate Living Arrangement Demonstration
330.320	Waivers
330.330	Definitions
330.340	Incorporated and Referenced Materials



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

SUBPART B: ADMINISTRATION

Section  
330.510 Administrator

SUBPART C: POLICIES

Section  
330.710 Resident Care Policies  
330.720 Admission and Discharge Policies  
330.730 Contract Between Resident and Facility  
330.740 Residents' Advisory Council  
330.750 General Policies  
330.760 Personnel Policies  
330.765 Initial Health Evaluation for Employees  
330.770 Disaster Preparedness  
330.780 Serious Incidents and Accidents

SUBPART D: PERSONNEL

Section  
330.910 Personnel  
330.911 Health Care Worker Background Check  
330.913 Nursing and Personal Care Assistants (Repealed)  
330.916 Student Interns (Repealed)  
330.920 Consultation Services  
330.930 Personnel Policies

SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section  
330.1110 Medical Care Policies  
330.1120 Personal Care  
330.1125 Life Sustaining Treatments  
330.1130 Communicable Disease Policies  
330.1135 Tuberculin Skin Test Procedures  
330.1140 Behavior Emergencies (Repealed)  
330.1145 Restraints  
330.1150 Emergency Use of Physical Restraints  
330.1155 Unnecessary, Psychotropic, and Antipsychotic Drugs

SUBPART F: RESTORATIVE SERVICES

Section  
330.1310 Activity Program  
330.1320 Work Programs  
330.1330 Written Policies for Restorative Services

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

SUBPART G: MEDICATIONS

Section  
330.1510 Medication Policies  
330.1520 Administration of Medication  
330.1530 Labeling and Storage of Medications

SUBPART H: RESIDENT AND FACILITY RECORDS

Section  
330.1710 Resident Record Requirements  
330.1720 Content of Medical Records  
330.1730 Records Pertaining to Residents' Property  
330.1740 Retention and Transfer of Resident Records  
330.1750 Other Resident Record Requirements  
330.1760 Retention of Facility Records  
330.1770 Other Facility Record Requirements

SUBPART I: FOOD SERVICE

Section  
330.1910 Director of Food Services  
330.1920 Dietary Staff in Addition to Director of Food Services  
330.1930 Hygiene of Dietary Staff  
330.1940 Diet Orders  
330.1950 Adequacy of Diet and Meal Pattern  
330.1960 Therapeutic Diets  
330.1970 Scheduling of Meals  
330.1980 Menu Planning  
330.1990 Food Preparation and Service  
330.2000 Food Handling Sanitation  
330.2010 Kitchen Equipment, Utensils, and Supplies

SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section  
330.2210 Maintenance  
330.2220 Housekeeping  
330.2230 Laundry Services

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section  
330.2410 Furnishings  
330.2420 Equipment and Supplies

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Section

330.2610 Codes  
330.2620 Water Supply  
330.2630 Sewage Disposal  
330.2640 Plumbing

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW  
SHELTERED CARE FACILITIES

Section

330.2810 Applicable Requirements (Repealed)  
330.2820 Applicability of These Standards  
330.2830 Submission of a Program Narrative  
330.2840 New Constructions, Additions, Conversions, and Alterations  
330.2850 Preparation and Submission of Drawings and Specifications  
330.2860 First Stage Drawings  
330.2870 Second Stage Drawings  
330.2880 Architectural Drawings  
330.2890 Structural Drawings  
330.3000 Mechanical Drawings  
330.3010 Electrical Drawings  
330.3020 Additions to Existing Structures  
330.3030 Specifications  
330.3040 Building Codes  
330.3050 Site  
330.3060 General Building Requirements  
330.3070 Administration  
330.3080 Corridors  
330.3090 Bath and Toilet Rooms  
330.3100 Living, Dining, Activity Rooms  
330.3110 Bedrooms  
330.3120 Special Care Room  
330.3130 Kitchen  
330.3140 Laundry  
330.3150 Housekeeping, Service, and Storage  
330.3160 Plumbing  
330.3170 Heating  
330.3180 Electrical

SUBPART N: FIRE PROTECTION STANDARDS FOR NEW SHELTERED  
CARE FACILITIES

Section

330.3310 Applicable Requirements (Repealed)  
330.3320 Applicability of These Standards  
330.3330 Fire Protection  
330.3340 Fire Department Service and Water Supply  
330.3350 General Building Requirements

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

330.3360 Exit Facilities and Subdivision of Floor Areas  
330.3370 Stairways, Vertical Openings, and Doorways  
330.3380 Corridors  
330.3390 Exit Lights and Directional Signs  
330.3400 Hazardous Areas and Combustible Storage  
330.3410 Fire Alarm and Detection System  
330.3420 Fire Extinguishers, Electric Wiring, and Miscellaneous  
330.3430 Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS FOR  
EXISTING SHELTERED CARE FACILITIES

Section

330.3610 Site  
330.3620 General Building Requirements  
330.3630 Administration  
330.3640 Corridors  
330.3650 Bath and Toilet Rooms  
330.3660 Living, Dining, and Activity Rooms  
330.3670 Bedrooms  
330.3680 Special Care Room  
330.3690 Kitchen  
330.3700 Laundry Room  
330.3710 Housekeeping and Service Rooms and Storage Space  
330.3720 Plumbing and Heating  
330.3730 Electrical

SUBPART P: FIRE PROTECTION STANDARDS FOR EXISTING  
SHELTERED CARE FACILITIES

Section

330.3910 Fire Protection  
330.3920 Fire Department Service and Water Supply  
330.3930 Occupancy and Fire Areas  
330.3940 Exit Facilities and Subdivision of Floor Areas  
330.3950 Stairways, Vertical Openings, and Doorways  
330.3960 Exit and Fire Escape Lights and Directional Signs  
330.3970 Hazardous Areas and Combustible Storage  
330.3980 Fire Alarm and Detection System  
330.3990 Fire Extinguishers, Electric Wiring, and Miscellaneous  
330.4000 Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART Q: RESIDENT'S RIGHTS

Section

330.4210 General  
330.4220 Medical and Personal Care Program  
330.4230 Restraints

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

330.4240 Abuse and Neglect  
330.4250 Communication and Visitation  
330.4260 Resident's Funds  
330.4270 Residents' Advisory Council  
330.4280 Contract With Facility  
330.4290 Private Right of Action  
330.4300 Transfer or Discharge  
330.4310 Complaint Procedures  
330.4320 Confidentiality  
330.4330 Facility Implementation

## SUBPART R: DAY CARE PROGRAMS

Section  
330.4510 Day Care In Long-Term Care Facilities

APPENDIX A Interpretation, Components, and Illustrative Services for Sheltered Care Facilities  
APPENDIX B Classification of Distinct Part of a Facility For Different Levels of Service (Repealed)  
APPENDIX C Forms for Day Care in Long-Term Care Facilities  
APPENDIX D Criteria for Activity Directors Who Need Only Minimal Consultation  
APPENDIX E Guidelines for the Use of Various Drugs  
TABLE A Heat Index Table/Apparent Temperature  
**Parameters---Relative-Humidity-and-Temperature**

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 807, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 933, effective July 28, 1980; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14547, effective November 8, 1982; amended at 6 Ill. Reg. 14681, effective November 15, 1982; amended at 7 Ill. Reg. 1963, effective January 28, 1983; amended at 7 Ill. Reg. 6973, effective May 17, 1983; amended at 7 Ill. Reg. 15825, effective November 15, 1983; amended at 8 Ill. Reg. 15596, effective August 15, 1984; amended at 8 Ill. Reg. 15941, effective August 17, 1984; codified at 8 Ill. Reg. 19790; amended at 8 Ill. Reg. 24241, effective November 28, 1984; amended at 8 Ill. Reg. 24696, effective December 7, 1984; amended at 9 Ill. Reg. 2952, effective February 25, 1985; amended at 9 Ill. Reg. 10974, effective July 1, 1985; amended at 11 Ill. Reg. 16879, effective October 1, 1987; amended at 12 Ill. Reg. 1017, effective December 24, 1987; amended at 12 Ill. Reg. 16870, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18939, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6562, effective April 17, 1989; amended at 13 Ill. Reg. 19580, effective December 1, 1989; amended at 14 Ill. Reg. 14928, effective

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

October 1, 1990; amended at 15 Ill. Reg. 516, effective January 1, 1991; amended at 16 Ill. Reg. 651, effective January 1, 1992; amended at 16 Ill. Reg. 14370, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2405, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8000, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15089, effective September 3, 1993; amended at 17 Ill. Reg. 16180, effective January 1, 1994; amended at 17 Ill. Reg. 19258, effective October 26, 1993; amended at 17 Ill. Reg. 19576, effective November 4, 1993; amended at 17 Ill. Reg. 21044, effective November 20, 1993; amended at 18 Ill. Reg. 1475, effective January 14, 1994; amended at 18 Ill. Reg. 15851, effective October 15, 1994; amended at 19 Ill. Reg. 11567, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 552, effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 10125, effective July 15, 1996; amended at 20 Ill. Reg. 12160, effective September 10, 1996; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

Section 330.315 Supported Congregate Living Arrangement Demonstration

- a) A facility or location approved to participate in the Supported Congregate Living Arrangement Demonstration authorized by Section 4.02b of the Illinois Act on the Aging [20 ILCS 105/4.02b] and requesting a waiver of the Act and this Part shall submit to the Department a joint waiver request with the Department on Aging or documentation that the Department on Aging failed to act upon a waiver application within 60 days after the applicant submitted a request to the Department on Aging [Section 4.02b of the Illinois Act on the Aging].
- b) The waiver application shall include the following:  
1) a specific listing of those portions of the Act and this Part for which a waiver is being requested; and  
2) the applicant's proposed Program Plan.
- c) The proposed Program Plan shall describe the types of residents to be served and the services that will be provided in the Supported Congregate Living Arrangement Demonstration. (Section 3-102.2 of the Act)
- d) The Department will evaluate the waiver application based on the criteria in Section 330.320 of this Part. The applicant shall be notified within 10 days after the Department's waiver determination. The Department may revoke the waiver if the Department determines that the Supported Congregate Living Arrangement Demonstration:  
1) is not in compliance with the Program Plan submitted in accordance with subsection (b) of this Section (Section 3-102.2 of the Act);  
2) is not in compliance with the Department's waiver approval conditions; or



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

3) has been terminated from the demonstration by the Department on Aging.

(Source: Added at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: POLICIES

## Section 330.770 Disaster Preparedness

a) For the purpose of this Section only, "disaster" means an occurrence, as a result of a natural force or mechanical failure such as water, wind or fire, or a lack of essential resources such as electrical power, that poses a threat to the safety and welfare of residents, personnel, and others present in the facility.

b) Each facility shall have policies covering disaster preparedness, including a written plan for staff, and residents and others to follow in case of fire, explosion, severe weather, or other hazardous circumstances or emergencies. The plan shall be rehearsed at least twice a year for each shift. The plan shall include, but is not be limited to, the following: (b)

- 1) All personnel employed on the premises shall be properly instructed in the use of fire extinguishers. (b)
- 2) A diagram written plan of the evacuation route shall be posted and made familiar to all personnel employed on the premises.
- 3) A written plan shall be developed for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning.

4) There shall be an established means of facility notification when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. The notification mechanism must be other than commercial radio or television. Approved notification measures include being within range of local tornado warning sirens, an operable National Oceanic and Atmospheric Administration weather radio in the facility or arrangements with local public safety agencies (police, fire, ESDA) to be notified if a warning is issued.

c) Fire and disaster drills shall be held at least quarterly for each shift of facility personnel and under varied conditions, in order to: Disaster drills for other than fire shall be held twice annually for each shift of facility personnel. Drills shall be held under varied conditions to:

- 1) Ensure that all personnel on all shifts are trained to perform assigned tasks;
- 2) Ensure that all personnel on all shifts are familiar with the use of the fire fighting equipment in the facility;

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

3) Evaluate the effectiveness of disaster plans and procedures. 7  
d) Fire and disaster drills shall include simulation of evacuation of residents to safe areas during at least one drill each year on each shift.  
e) There shall be special provisions for the evacuation of the physically handicapped persons, including those who are hearing or sight impaired deaf or blind, such as fire chutes and mattress-locks with poles.

f) Where the welfare of the residents precludes an actual evacuation of an entire building, there must be drills involving the evacuation of successive portions of the building under such conditions as to assure the capability of evacuating the entire building with the personnel usually available, should the need arise.

g) A there shall be a written evaluation of each drill shall be submitted to the facility administrator and which shall be maintained for one year three years.

h) A written plan shall be developed for temporarily relocating the residents for any disaster emergency requiring relocation and any time the temperature in residents' bedrooms falls below 55° F. degrees Fahrenheit for 12 hours or more.

i) Reporting of Disasters Emergencies

- 1) Upon the occurrence of any emergency or disaster requiring hospital service, police, fire department or coroner, the facility administrator or their designee must provide a preliminary report to the Department either by using by phone immediately or at the latest the next working day the Department utilizing either the nursing home hotline or by contacting directly contacting the appropriate Department Regional Office during business hours. This preliminary report shall include, at a minimum:

- A) name and location of facility;
- B) type of disaster emergency;
- C) number of injuries or deaths to residents;
- D) number of beds not usable due to the occurrence event;
- E) estimate of the extent of damages to the facility;
- F) type of assistance needed, if any;
- G) other State state or local agencies notified about the problem.

- 2) If the disaster emergency will not require direct Departmental assistance, the facility shall provide the preliminary report within 24 hours after of the occurrence incident. Additionally, the facility shall submit Department shall receive a full written account to the Department within seven days after the occurrence of the incident which includes the information specified in subsection subsections j) (d) (1) (f) through (f) (f) (6) of this Section and a statement of action taken by the facility after the preliminary report.

j) Each facility shall establish and implement policies and procedures

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

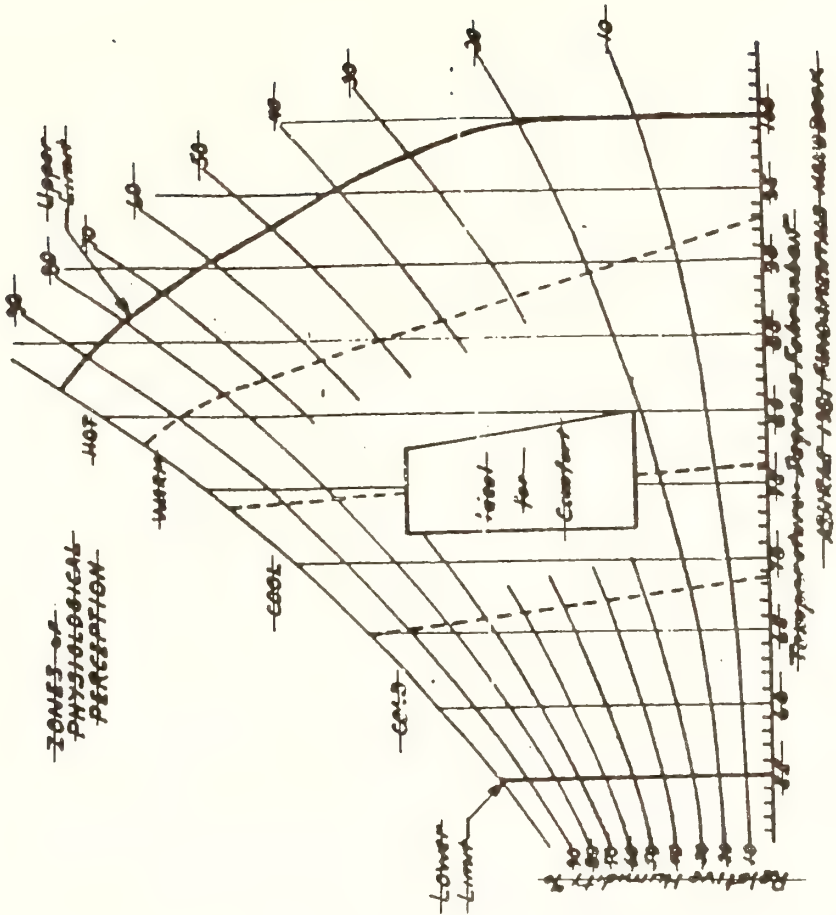
in a written plan to provide for the health, safety, welfare and comfort of all residents when the heat index/apparent temperature (see Section 330. Table A), as established by the National Oceanic and Atmospheric Administration, inside the residents' living, dining, activities, or sleeping areas of the facility exceeds a heat index/apparent temperature of 80° F. whenever the temperature and relative humidity inside the residents' living, dining, activities or sleeping areas of the facility are equal to or exceed the upper or lower limit lines (the solid lines) of the chart. Zones of Physiological Perception displayed in Table A--Disaster Preparedness Parameters--Relative Humidity and Temperature

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

Section 330. TABLE A Disaster Preparedness Parameters--Relative Humidity and Temperature Heat Index Table/Apparent Temperature



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS  
(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

ILLINOIS REGISTER  
DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

		Air Temperature (degrees Fahrenheit)																		
		70	75	80	85	90	95	100	105	110	115	120	125	130	135					
5	64	69	74	79	84	88	93	97	102	107	111	116	122	128						
10	65	70	75	80	85	90	95	100	105	111	116	123	131							
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50	69	75	81	88	96	107	120	135	150											
55	69	75	81	89	98	110	126	142												
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95	71	79	89	105																

(Table is from the National Oceanic and Atmospheric Administration)  
(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code

- 2) Code Citation: 77 Ill. Adm. Code 300

- 3) Section Numbers: Proposed Action:  
300.315 New Section  
300.670 Amendments  
300.Table D Amendments

- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45] and implementing P.A. 89-530

- 5) A Complete Description of the Subjects and Issues Involved: The rules in Part 300 regulate the licensure of skilled nursing and intermediate care facilities.

Section 300.315 is being added to implement Public Act 89-530 (effective July 19, 1996), which amended the Illinois Act on the Aging, the Illinois Health Facilities Planning Act, and the Nursing Home Care Act to make changes in the Department on Aging's Supported Congregate Living Arrangement Demonstration Project. The amendment to the Nursing Home Care Act allows the Department of Public Health to grant waivers from the requirements of the Act for facilities participating in the supported congregate living arrangement demonstration project. The rule provides the information that must be included on a waiver application; references the criteria under which the application will be evaluated; and lists the circumstances under which the Department may revoke the waiver.

Section 300.670 is being amended to revise requirements for disaster preparedness. A definition of "disaster" has been added. A written plan is required for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning. An established means of facility notification is required when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. Fire drills must be held at least quarterly, for each shift of personnel, and disaster drills for other than fire must be held twice annually, for each shift of personnel.

Section 300.Table D has been replaced with a new heat index/apparent temperature chart from the National Oceanic and Atmospheric Administration.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

- 6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

- 7) Does this Rulemaking Contain an Automatic Repeal Date? No

- 8) Does this Rulemaking Contain Any Incorporations By Reference? No

- 9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers	Proposed Action	Ill. Reg. Citation
300.620	New Section	21 Ill. Reg. 1808
300.661	Amendments	21 Ill. Reg. 3527
300.663	Amendments	21 Ill. Reg. 3527

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

- 11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking:

Interested persons may present their comments concerning these rules by writing to:

Ms. Gail M. Devito  
Division of Governmental Affairs  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-6187

within 45 days after this issue of the *Illinois Register*.

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. Devito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

- 12) Initial Regulatory Flexibility Analysis:

- A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: long-term care facilities

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS  
TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300  
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE  
SUBPART A: GENERAL PROVISIONS

Section	
300.110	General Requirements
300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.165	Criteria for Adverse Licensure Actions
300.170	Denial of Initial License
300.175	Denial of Renewal of License
300.180	Revocation of License
300.190	Experimental Program Conflicting With Requirements
300.200	Inspections, Surveys, Evaluations and Consultation
300.210	Filing an Annual Attested Financial Statement
300.220	Information to Be Made Available to the Public By the Department
300.230	Information to Be Made Available to the Public By the Licensee
300.240	Municipal Licensing
300.250	Ownership Disclosure
300.260	Issuance of Conditional Licenses
300.270	Monitor and Receivership
300.271	Presentation of Findings
300.272	Determination to Issue a Notice of Violation or Administrative Warning
300.274	Determination of the Level of a Violation
300.276	Notice of Violation
300.277	Administrative Warning
300.278	Plans of Correction
300.280	Reports of Correction
300.282	Conditions for Assessment of Penalties
300.284	Calculation of Penalties
300.286	Determination to Assess Penalties
300.288	Reduction or Waiver of Penalties
300.290	Quarterly List of Violators
300.300	Alcoholism Treatment Programs In Long-Term Care Facilities
300.310	Department May Survey Facilities Formerly Licensed
300.315	Supported Congregate Living Arrangement Demonstration
300.320	Waivers
300.330	Definitions
300.340	Incorporated and Referenced Materials

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS  
B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None  
C) Types of Professional Skills Necessary for Compliance: None

13) Regulatory Agenda on which this rulemaking was included: July 1997  
The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART B: ADMINISTRATION

Section  
300.510 Administrator

## SUBPART C: POLICIES

Section  
300.610 Resident Care Policies  
300.620 Admission and Discharge Policies  
300.630 Contract Between Resident and Facility  
300.640 Residents' Advisory Council  
300.650 Personnel Policies  
300.655 Initial Health Evaluation for Employees  
300.660 Nursing Assistants  
300.661 Health Care Worker Background Check  
300.663 Registry of Certified Nurse Aides  
300.665 Student Interns  
300.670 Disaster Preparedness  
300.680 Restraints  
300.682 Nonemergency Use of Physical Restraints  
300.684 Emergency Use of Physical Restraints  
300.686 Unnecessary, Psychotropic, and Antipsychotic Drugs  
300.690 Serious Incidents and Accidents

## SUBPART D: PERSONNEL

Section  
300.810 General  
300.820 Categories of Personnel  
300.830 Consultation Services  
300.840 Personnel Policies

SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section  
300.1010 Medical Care Policies  
300.1020 Communicable Disease Policies  
300.1025 Tuberculin Skin Test Procedures  
300.1030 Medical Emergencies  
300.1035 Life-Sustaining Treatments  
300.1040 Behavior Emergencies (Repealed)  
300.1050 Dental Standards

## SUBPART F: NURSING AND PERSONAL CARE

Section  
300.1210 General Requirements for Nursing and Personal Care

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

300.1220 Supervision of Nursing Services  
300.1230 Staffing  
300.1240 Additional Requirements

## SUBPART G: RESIDENT CARE SERVICES

Section  
300.1410 Activity Program  
300.1420 Specialized Rehabilitation Services  
300.1430 Work Programs

## SUBPART H: MEDICATIONS

Section  
300.1610 Medication Policies and Procedures  
300.1620 Conformance With Physician's Orders  
300.1630 Administration of Medication  
300.1640 Labeling and Storage of Medications  
300.1650 Control of Medications

## SUBPART I: RESIDENT AND FACILITY RECORDS

Section  
300.1810 Resident Record Requirements  
300.1820 Content of Medical Records  
300.1830 Records Pertaining to Residents' Property  
300.1840 Retention and Transfer of Resident Records  
300.1850 Other Resident Record Requirements  
300.1860 Staff Responsibility for Medical Records  
300.1870 Retention of Facility Records  
300.1880 Other Facility Record Requirements

## SUBPART J: FOOD SERVICE

Section  
300.2010 Director of Food Services  
300.2020 Dietary Staff in Addition to Director of Food Services  
300.2030 Hygiene of Dietary Staff  
300.2040 Diet Orders  
300.2050 Adequacy of Diet and Meal Pattern  
300.2060 Therapeutic Diets  
300.2070 Scheduling Meals  
300.2080 Menu Planning  
300.2090 Food Preparation and Service  
300.2100 Food Handling Sanitation  
300.2110 Kitchen Equipment, Utensils, and Supplies

## SUBPART K: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Section  
300.2210 Maintenance  
300.2220 Housekeeping  
300.2230 Laundry Services  
  
SUBPART L: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section  
300.2410 Furnishings  
300.2420 Equipment and Supplies  
300.2430 Sterilization of Equipment and Supplies

SUBPART M: WATER SUPPLY AND SEWAGE DISPOSAL

Section  
300.2610 Codes  
300.2620 Water Supply  
300.2630 Sewage Disposal  
300.2640 Plumbing

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS  
FOR NEW INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section  
300.2810 Applicability of These Standards  
300.2820 Codes and Standards  
300.2830 Preparation of Drawings and Specifications  
300.2840 Site  
300.2850 Administration and Public Areas  
300.2860 Nursing Unit  
300.2870 Dining, Living, Activities Rooms  
300.2880 Therapy and Personal Care  
300.2890 Service Departments  
300.2900 General Building Requirements  
300.2910 Structural  
300.2920 Mechanical Systems  
300.2930 Plumbing Systems  
300.2940 Electrical Systems

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS  
FOR EXISTING INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

Section  
300.3010 Applicability  
300.3020 Codes and Standards  
300.3030 Preparation of Drawings and Specifications  
300.3040 Site  
300.3050 Administration and Public Areas

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

300.3060 Nursing Unit  
300.3070 Living, Dining, Activities Rooms  
300.3080 Treatment and Personal Care  
300.3090 Service Departments  
300.3100 General Building Requirements  
300.3110 Structural  
300.3120 Mechanical Systems  
300.3130 Plumbing Systems  
300.3140 Electrical Requirements

SUBPART P: RESIDENT'S RIGHTS

Section  
300.3210 General  
300.3220 Medical and Personal Care Program  
300.3230 Restraints  
300.3240 Abuse and Neglect  
300.3250 Communication and Visitation  
300.3260 Resident's Funds  
300.3270 Residents' Advisory Council  
300.3280 Contract With Facility  
300.3290 Private Right of Action  
300.3300 Transfer or Discharge  
300.3310 Complaint Procedures  
300.3320 Confidentiality  
300.3330 Facility Implementation

SUBPART Q: SPECIALIZED LIVING FACILITIES FOR THE MENTALLY ILL

Section  
300.3410 Application of Other Divisions of These Minimum Standards  
300.3420 Administrator  
300.3430 Policies  
300.3440 Personnel  
300.3450 Resident Living Services Medical and Dental Care  
300.3460 Resident Services Program  
300.3470 Psychological Services  
300.3480 Social Services  
300.3490 Recreational and Activities Services  
300.3500 Individual Treatment Plan  
300.3510 Health Services  
300.3520 Medical Services  
300.3530 Dental Services  
300.3540 Optometric Services  
300.3550 Audiometric Services  
300.3560 Podiatric Services  
300.3570 Occupational Therapy Services  
300.3580 Nursing and Personal Care

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

300.3590 Resident Care Services  
300.3600 Record Keeping  
300.3610 Food Service  
300.3620 Furnishings, Equipment and Supplies (New and Existing Facilities)  
300.3630 Design and Construction Standards (New and Existing Facilities)

SUBPART R: DAYCARE PROGRAMS

Section  
300.3710 Day Care in Long-Term Care Facilities

APPENDIX A Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities  
APPENDIX B Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)  
APPENDIX C Federal Requirements Regarding Patients'/Residents' Rights  
APPENDIX D Forms for Day Care in Long-Term Care Facilities  
APPENDIX E Criteria for Activity Directors Who Need Only Minimal Consultation  
APPENDIX F Guidelines for the Use of Various Drugs  
TABLE A Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities  
TABLE B Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities  
TABLE C Construction Types and Sprinkler Requirements for Existing Skilled Nursing Facilities/Intermediate Care Facilities  
TABLE D Heat Index Table/Apparent Temperature Bisaster--Preparedness Parameters---Relative-Humidity-and-Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984;

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

Section 300.315 Supported Congregate Living Arrangement Demonstration

- a) A facility or location approved to participate in the Supported Congregate Living Arrangement Demonstration authorized by Section 4.02b of the Illinois Act on the Aging [20 ILCS 105/4.02b] and requesting a waiver of the Act and this Part shall submit to the Department a joint waiver request with the Department on Aging or documentation that the Department on Aging failed to act upon a waiver application within 60 days after the applicant submitted a request to the Department on Aging [Section 4.02b of the Illinois Act on Aging].
- b) The waiver application shall include the following:
  - 1) a specific listing of those portions of the Act and this Part for which a waiver is being requested; and
  - 2) the applicant's proposed Program Plan.
- c) The proposed Program Plan shall describe the types of residents to be served and the services that will be provided in the Supported Congregate Living Arrangement Demonstration. (Section 3-102.2 of the

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

- Act)
- d) The Department will evaluate the waiver application based on the criteria in Section 300.320 of this Part. The applicant shall be notified within 10 days after the Department's waiver determination.
- e) The Department may revoke the waiver if the Department determines that the Supported Congregate Living Arrangement Demonstration:
- 1) is not in compliance with the Program Plan submitted in accordance with subsection (b) of this Section (Section 3-102.2 of the Act);
  - 2) is not in compliance with the Department's waiver approval conditions; or
  - 3) has been terminated from the demonstration by the Department on Aging.

(Source: Added at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART C: POLICIES

Section 300.670 Disaster Preparedness

- a) For the purpose of this Section only, "disaster" means an occurrence, as a result of a natural force or mechanical failure such as water, wind or fire, or a lack of essential resources such as electrical power, that poses a threat to the safety and welfare of residents, personnel, and others present in the facility.
- b) Each facility shall have policies covering disaster preparedness, including a written plan for staff, and residents and others to follow in case of fire, explosion, severe weather, or other hazardous circumstances or emergencies. The plan shall be rehearsed at least twice a year for each shift. The plan shall include, but is not be limited to, the following: (b)
- 1) All personnel employed on the premises shall be properly instructed in the use of fire extinguishers. (b)
  - 2) A diagram written plan of the evacuation route shall be posted, and made familiar to all personnel employed on the premises.
  - 3) A written plan shall be developed for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning.
  - 4) There shall be an established means of facility notification when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. The notification mechanism must be other than commercial radio or television. Approved notification measures include being within range of local tornado warning sirens, an operable National Oceanic and Atmospheric Administration weather radio in the facility or arrangements with local public safety agencies (police, fire, ESDA) to be notified if a warning is

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

issued.

- c) Fire and disaster drills shall be held at least quarterly for each shift of facility personnel. Disaster drills for other than fire shall be held twice annually for each shift of facility personnel. Drills shall be held under varied conditions to: and under varied conditions in order to:
- 1) Ensure that all personnel on all shifts are trained to perform assigned tasks;
  - 2) Ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment in the facility;
  - 3) Evaluate the effectiveness of disaster plans and procedures.
- d) Fire and disaster drills shall include simulation of evacuation of residents to safe areas during at least one drill each year on each shift.
- e) There shall be special provisions for the evacuation of the physically handicapped persons, including those who are hearing or sight impaired deaf or blind, such as fire chutes and mattress toops with poles.
- f) Where the welfare of the residents precludes an actual evacuation of an entire building, there must be drills involving the evacuation of successive portions of the building under such conditions as to assure the capability of evacuating the entire building with the personnel usually available, should the need arise.
- g) Where shift-be-a written evaluation of each drill shall be submitted to the facility administrator and which shall be maintained for one year three years.
- h) A written plan shall be developed for temporarily relocating the residents for any disaster emergency requiring relocation and any time the temperature in residents' bedrooms falls below 55° F. degrees Fahrenheit for 12 hours or more.

- i) Reporting of Disasters Emergencies
- 1) Upon the occurrence of any emergency--or disaster requiring hospital service, police, fire department or coroner, the facility administrator or their designee must provide a preliminary report to the Department utilizing either by using the nursing home hotline or by contacting directly contacting the appropriate Department Regional Office during business hours. This preliminary report shall include, at a minimum:
- A) name Name and location of facility;
  - B) type of disaster emergency;
  - C) number of injuries or deaths to residents;
  - D) number of beds not usable due to the occurrence event;
  - E) estimate of the extent of damages to the facility;
  - F) type of assistance needed, if any;
  - G) other State state or local agencies notified about the problem.
- 2) If the disaster emergency will not require direct Departmental assistance, the facility shall provide the preliminary report



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

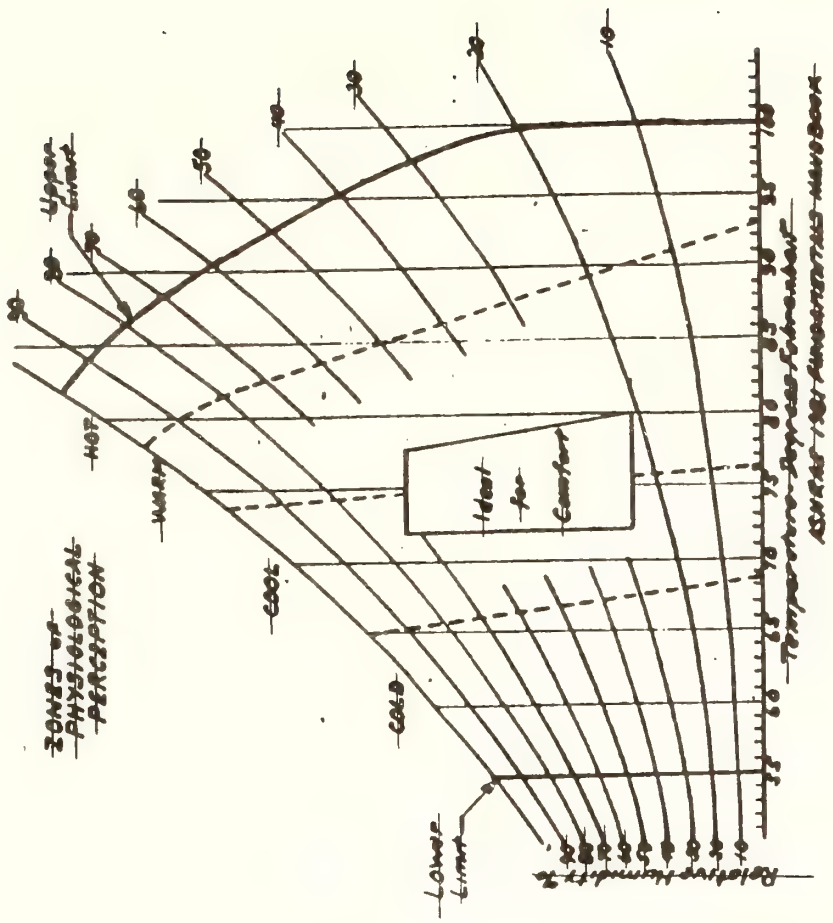
within 24 hours after of the occurrence incident. Additionally, the facility shall submit Department-shall-receive a full written account to the Department within seven days after the occurrence, of-the-incident which includes the information specified in subsection subsections (d)(1)(A)-through (d)(1)(F) of this Section and a statement of actions taken by the facility after the preliminary report.

i) Each facility shall establish and implement policies and procedures in a written plan to provide for the health, safety safety, welfare and comfort of all residents when the heat index/apparent temperature (see Section 300-Table D), as established by the National Oceanic and Atmospheric Administration, inside the residents' living, dining, activities, or sleeping areas of the facility exceeds a heat index/apparent temperature of 80° F. whenever-the-temperature-and relative-humidity-inside-the-residents-living-dining-activities-or sleeping-areas-of-the-facility-are-equal-to-or-exceed-the-upper-or lower-limit-lines-(the-solid-lines)-of-the-chart-ones-of Physiological-Perception, as displayed-in-Table-B, as the Preparedness-Parameters-Relative-Humidity-and-Temperature-(A7B)

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH  
DRAFT NOTICE OF PROPOSED AMENDMENTS

Section 300-Table D Disaster Preparedness Parameters-Relative Humidity and-Temperature Heat Index Table/Apparent Temperature



DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Retailers' Occupation Tax

2) Code Citation: 86 Ill. Adm. Code 130

3) Section Numbers: Proposed Action:  
130.331 New Section

4) Statutory Authority: 35 ILCS 120

5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends the Department's rules concerning the Retailers' Occupation Tax Act to provide detailed rules on the Manufacturer's Purchase Credit. A Manufacturer's Purchase Credit is provided by P.A. 88-547 for purchases made on and after January 1, 1995, of manufacturing machinery and equipment. This rulemaking also incorporates the changes provided by P.A. 89-89, effective June 30, 1995. This amendment to the Retailers' Occupation Tax Act rules crossreferences existing rules as appropriate.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? Yes

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State Mandate, nor does it modify any existing State Mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rule may submit them in writing by no later than 45 days after publication of this notice to:

Terry Charlton  
Associate Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
Phone: (217) 782-6996

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Any small manufacturing business or any small business that sells manufacturing machinery or

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

Air Temperature (degrees Fahrenheit)

	70	75	80	85	90	95	100	105	110	115	120	125	130	135
5	64	69	74	79	84	88	93	97	102	107	111	116	122	128
10	65	70	75	80	85	90	95	100	105	111	116	123	131	
15	65	71	76	81	86	91	97	102	108	115	123	131		
20	66	72	77	82	87	93	99	105	112	120	130	141		
25	66	72	77	83	88	94	101	109	117	127	139			
30	67	73	78	84	90	96	104	113	123	135	148			
35	67	73	79	85	91	98	107	118	130	143				
40	68	74	79	86	93	101	110	123	137	151				
45	68	74	80	87	95	104	115	129	143					
50	69	75	81	88	96	107	120	135	150					
55	69	75	81	89	98	110	126	142						
60	70	76	82	90	100	114	132	149						
65	70	76	83	91	102	119	138							
70	70	77	85	93	106	124	144							
75	70	77	86	95	109	130								
80	71	78	86	97	113	136								
85	71	78	87	99	117									
90	71	79	88	102	122									
95	71	79	89	105										

(Table is from the National Oceanic and Atmospheric Administration)

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

equipment or production related tangible personal property to manufacturers.

B) Reporting, bookkeeping or other procedures required for compliance: A manufacturer must report the credit earned or used to the Department of Revenue on forms provided by the Department. Suppliers and servicemen of manufacturers must obtain a Manufacturer's Purchase Credit certificate from the manufacturer and keep the certificate with the supplier's or serviceman's records unless that certification is incorporated into the manufacturer's purchase order.

C) Types of professional skills necessary for compliance: No additional skills are needed for compliance.

13) Regulatory Agenda on which this rulemaking was summarized: January 1997

The full text of the Proposed Amendment(s) begins on the next page:

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 86: REVENUE

## CHAPTER I: DEPARTMENT OF REVENUE

## PART 130

## RETAILERS' OCCUPATION TAX

## SUBPART A: NATURE OF TAX

Section  
130.101  
130.105  
130.110  
130.111  
130.115  
130.120

Character and Rate of Tax  
Responsibility of Trustees, Receivers, Executors or Administrators  
Occasional Sales  
Sale of Used Motor Vehicles by Leasing or Rental Business  
Habitual Sales  
Nontaxable Transactions

## SUBPART B: SALE AT RETAIL

Section  
130.201  
130.205  
130.210  
130.215  
130.220

The Test of a Sale at Retail  
Sales for Transfer Incident to Service  
Sales of Tangible Personal Property to Purchasers for Resale  
Further Illustrations  
Sales to Lessors of Tangible Personal Property

## SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section  
130.305  
130.310  
130.315  
130.320  
130.321  
130.325  
130.330  
130.331  
130.335  
130.340  
130.345  
130.350

Farm Machinery and Equipment  
Food, Drugs, Medicines and Medical Appliances  
Fuel Sold for Use in Vessels on Rivers Bordering Illinois  
Gasohol  
Fuel Used by Air Common Carriers in International Flights  
Graphic Arts Machinery and Equipment Exemption  
Manufacturing Machinery and Equipment  
Manufacturer's Purchase Credit  
Pollution Control Facilities  
Rolling Stock  
Oil Field Exploration, Drilling and Production Equipment  
Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment

## SUBPART D: GROSS RECEIPTS

Section  
130.401  
130.405

Meaning of Gross Receipts  
How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser





## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

130.1301 When Lessee of Premises Must File Return for Leased Department  
 130.1305 When Lessor of Premises Should File Return for Leased Department  
 130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

## SUBPART N: SALES FOR RE SALE

Section  
 130.1401 Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale  
 130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale  
 130.1410 Requirements for Certificates of Resale (Repealed)  
 130.1415 Resale Number--When Required and How Obtained  
 130.1420 Blanket Certificate of Resale (Repealed)

## SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section  
 130.1501 Claims for Credit--Limitations--Procedure  
 130.1505 Disposition of Credit Memoranda by Holders Thereof  
 130.1510 Refunds  
 130.1515 Interest

SUBPART P: PROCEDURE TO BE FOLLOWED UPON  
SELLING OUT OR DISCONTINUING BUSINESS

Section  
 130.1601 When Returns are Required After a Business is Discontinued  
 130.1605 When Returns are Not Required After Discontinuation of a Business  
 130.1610 Cross Reference to Bulk Sales Regulation

## SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section  
 130.1701 Bulk Sales: Notices of Sales of Business Assets

## SUBPART R: POWER OF ATTORNEY

Section  
 130.1801 When Powers of Attorney May be Given  
 130.1805 Filing of Power of Attorney With Department  
 130.1810 Filing of Papers by Agent Under Power of Attorney

## SUBPART S: SPECIFIC APPLICATIONS

Section  
 130.1901 Addition Agents to Plating Baths  
 130.1905 Agricultural Producers

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

130.1910 Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage Stamps and Like Articles  
 130.1915 Auctioneers and Agents  
 130.1920 Barbers and Beauty Shop Operators  
 130.1925 Blacksmiths  
 130.1930 Chiroprodists, Osteopaths and Chiropractors

130.1935 Computer Software  
 130.1940 Construction Contractors and Real Estate Developers  
 130.1945 Co-operative Associations  
 130.1950 Dentists  
 130.1951 Enterprise Zones  
 130.1952 Sales of Building Materials to a High Impact Business  
 130.1955 Farm Chemicals  
 130.1960 Finance Companies and Other Lending Agencies - Installment Contracts - Repossessions

130.1965 Florists and Nurserymen  
 130.1970 Hatcheries  
 130.1975 Operators of Games of Chance and Their Suppliers  
 130.1980 Optometrists and Opticians  
 130.1985 Pawnbrokers

130.1990 Peddlers, Hawkers and Itinerant Vendors  
 130.1995 Personalizing Tangible Personal Property  
 130.2000 Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers

130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons  
 130.2006 Sales by Teacher-Sponsored Student Organizations  
 130.2007 Exemption Identification Numbers  
 130.2008 Sales by Nonprofit Service Enterprises  
 130.2010 Persons Who Rent or Lease the Use of Tangible Personal Property to Others

130.2015 Persons Who Repair or Otherwise Service Tangible Personal Property  
 130.2020 Physicians and Surgeons  
 130.2025 Picture-Framers

130.2030 Public Amusement Places  
 130.2035 Registered Pharmacists and Druggists  
 130.2040 Retailers of Clothing  
 130.2045 Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like

130.2050 Sales and Gifts By Employers to Employees  
 130.2055 Sales by Governmental Bodies  
 130.2060 Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products  
 130.2065 Sales of Automobiles for Use In Demonstration  
 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products

130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders  
 130.2080 Sales to Governmental Bodies, Foreign Diplomats and Consular

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

130.2085 Personnel  
Sales to or by Banks, Savings and Loan Associations and Credit Unions  
130.2090 Sales to Railroad Companies  
130.2095 Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles  
130.2100 Sellers of Feeds and Breeding Livestock  
130.2105 Sellers of Newspapers, Magazines, Books, Sheet Music and Phonograph Records and Their Suppliers  
130.2110 Sellers of Seeds and Fertilizer  
130.2115 Sellers of Machinery, Tools and the Like  
130.2120 Suppliers of Persons Engaged in Service Occupations and Professions  
130.2125 Trading Stamps and Discount Coupons  
130.2130 Undertakers and Funeral Directors  
130.2135 Vending Machines  
130.2140 Vendors of Curtains, Slip Covers, Floor Covering and Other Similar Items Made to Order  
130.2145 Vendors of Meals  
130.2150 Vendors of Memorial Stones and Monuments  
130.2155 Vendors of Signs  
130.2156 Vendors of Steam  
130.2160 Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.  
130.2165 Veterinarians  
130.2170 Warehousemen

## ILLUSTRATION A: Examples of Tax Exemption Cards

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 39b3 of the Civil Administrative Code of Illinois [20 ILCS 2505/39b3].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987.

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART C: CERTAIN STATUTORY EXEMPTIONS

## Section 130.331 Manufacturer's Purchase Credit

## a) Earning Manufacturer's Purchase Credit

- 1) Effective January 1, 1995, a manufacturer may earn a credit when purchasing exempt manufacturing machinery and equipment. The credit is known as the Manufacturer's Purchase Credit or MPC. The amount of credit is limited to a percentage of the 6.25% State rate of tax that would have been incurred on the purchase of exempt manufacturing machinery and equipment. (See Section 130.330 of this Part.)
- 2) The percentage of credit earned based upon exempt purchases increases over time as follows:
  - A) 15% for purchases made on or before June 30, 1995.
  - B) 25% for purchases made after June 30, 1995, and on or before June 30, 1996.
  - C) 40% for purchases made after June 30, 1996, and on or before June 30, 1997.



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

*June 30, 1997.*

- D) 50% for purchases made on or after July 1, 1997. (Section 3-85 of the Use Tax Act)
- 3) The credit is earned at the time qualifying manufacturing machinery and equipment is purchased. A qualifying purchase is considered to take place as of the date of invoice of that qualifying manufacturing machinery and equipment. The credit is considered to be earned on qualifying manufacturing machinery and equipment that is purchased under an installment contract or progress payment contract at the time that each installment or progress payment is invoiced. The amount of credit that is earned is based on the amount of tax that would have been due on that portion of the purchase price that is invoiced.
- 4) No credit is earned for exempt purchases under the expanded Enterprise Zone exemption, as described in subsection (b) of Section 130.1951 of this Part, unless that purchase would also qualify as exempt under the manufacturing machinery and equipment exemption described in Section 130.330 of this Part.
- 5) No credit is earned for a purchase of tangible personal property that qualifies as an occasional sale, as described in subsection (a) of Section 130.110 of this Part.
- 6) No credit is earned for a purchase of tangible personal property that is purchased for resale. (See subsection (a) of Section 130.210 of this Part.)

b) Using Manufacturer's Purchase Credit

- 1) The credit may be used to satisfy Use Tax or Service Use Tax liability incurred on the purchase of qualifying production related tangible personal property. (See Section 3-85 of the Use Tax Act [35 ILCS 105/3-85] and Section 3-70 of the Service Use Tax Act [35 ILCS 110/3-70].) The credit may be applied only to the 6.25% State rate of tax incurred. Prior to the credit being earned, credit may not be used on a qualifying purchase, except as provided in subsection (e)(7)(B) below. However, the credit may be used the same day that it is earned, but must be followed by proper reporting of the credit as set out in subsections (c), (d), and (e) below. For purposes of when to use accumulated Manufacturer's Purchase Credit, a manufacturer is always safe to use the credit in a month after the month in which the credit was earned.
- 2) The credit is non-transferable and may not be used to satisfy the tax liability of any taxpayer other than the manufacturer that earned the credit.
- A) A manufacturer may enter into a written contract with a construction contractor to authorize that construction contractor to utilize Manufacturer's Purchase Credit accumulated by the manufacturer for the purchase of tangible personal property to be installed into real estate within a manufacturing facility for use in a production related

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

- process. The written contract must specify the specific dollar amount of Manufacturer's Purchase Credit that the construction contractor is authorized to utilize on behalf of the manufacturer.
- B) To properly utilize the Manufacturer's Purchase Credit on behalf of the manufacturer when purchasing tangible personal property for installation into real estate within a manufacturing facility for use in a production related process, the contractor must furnish the supplier with information stating:
- The manufacturer's name and address;
  - The manufacturer's registration or resale number; and
  - A statement that a specific amount of Use Tax or Service Use Tax liability, not to exceed 6.25% of the selling price, is being satisfied with the Manufacturer's Purchase Credit.
- C) To properly utilize the Manufacturer's Purchase Credit on behalf of the manufacturer when purchasing tangible personal property for installation into real estate within a manufacturing facility, the contractor must furnish the manufacturer with information stating:
- Each vendor's or supplier's name and address (including, if applicable, either the vendor's or supplier's registration number or Federal Employer Identification Number);
  - The date of purchase, purchase price, and description of the tangible personal property purchased; and
  - The amount of the Use Tax or Service Use Tax liability, not to exceed 6.25% of the selling price, that was satisfied by the Manufacturer's Purchase Credit utilized for each purchase.
- D) A credit reported under a particular Illinois Business Tax number may not be transferred to a related but separately registered division or company.
- 3) Production related tangible personal property means all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act takes place, and all tangible personal property used or consumed by a manufacturer in research and development regardless of use within or without a manufacturing facility. (See Section 3-85 of the Use Tax Act.)
- 4) By way of illustration and not limitation, the following uses of tangible personal property by a manufacturer in a manufacturing facility will be considered production related:
- Tangible personal property purchased by a manufacturer for incorporation into real estate within a manufacturing facility for use in a production related process; or

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

tangible personal property purchased by a construction contractor for incorporation into real estate within a manufacturing facility for use in a production related process pursuant to a written contract described in subsection (b)(2)(A) of this Section.

B) Supplies and consumables used in a manufacturing facility, including fuels, coolants, solvents, oils, lubricants, cleaners and adhesives.

C) Hand tools, protective apparel, and fire and safety equipment used or consumed in a manufacturing facility.

D) Tangible personal property used or consumed for purposes of pre-production and post-production material handling, receiving, quality control, inventory control, storage, staging and packing for shipping or transportation.

5) By way of illustration and not limitation, the following uses of property will not be considered production related:

A) The use of trucks, trailers, and motor vehicles which are required to be titled or registered pursuant to the Illinois Motor Vehicle Code [625 ILCS 5], and aircraft or watercraft required to be registered with an agency of State or federal government.

B) Office supplies, computers, desks, copiers and equipment which are used for sales, purchasing, accounting, fiscal management, marketing and personnel recruitment or selection activities, even if such use takes place within a manufacturing facility.

C) Tangible personal property used or consumed for aesthetic or decorative purposes, including landscaping and artwork.

D) Tangible personal property used or consumed outside the manufacturing facility, including tangible personal property listed in subsection (b)(4)(D) above with the exception of tangible personal property used or consumed for research and development purposes.

E) Tangible personal property purchased by a construction contractor for incorporation into a manufacturing facility, unless such purchase by the construction contractor was made on behalf of a manufacturer pursuant to a written contract described in subsection (b)(2)(A) of this Section.

6) The credit may be used to satisfy the State portion (6.25%) of a Use Tax or Service Use Tax liability arising under audit where the liability established is the result of an erroneous claim of the Manufacturing Machinery and Equipment exemption provided in Section 2-45 of the Retailers' Occupation Tax Act, or where the manufacturer failed to self-assess and remit Use Tax or Service Use Tax on the purchase of production related tangible personal property. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.) The credit may only be used to satisfy the State portion (6.25%) of a Use Tax or Service Use Tax

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

liability incurred on the purchase of qualifying production related tangible personal property. Under no circumstances may the credit be used to satisfy penalty and interest or other tax liability incurred by the manufacturer.

7) Credit may be used to satisfy the State portion (6.25%) of a qualifying Use Tax or Service Use Tax liability incurred by a manufacturer on a purchase of production related tangible personal property when payment of tax must be made directly to the Department.

8) The credit expires December 31st of the second calendar year following the calendar year in which the credit was earned. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.) However, for credit earned on or after June 30, 1995, the life of unreported credit may be extended during the period of an agreed extension of the statute of limitations as provided in subsection (e)(7) below.

9) A manufacturer may use credit to satisfy Service Use Tax liability only when purchasing production related tangible personal property transferred incident to a sale of service.

C) Reporting Manufacturer's Purchase Credit Earned or Used for Periods from January 1, 1995 through June 29, 1995

1) In order to validate credit earned as the result of a qualifying purchase of exempt manufacturing machinery and equipment or credit used on a qualifying purchase, the manufacturer must report credit earned to the Department in a timely manner. Failure to report credit earned will result in expiration of the credit as of the date earned.

2) On forms prescribed or approved by the Department, a manufacturer must report credit earned or used by the last day of the second month following the month of creation or use of the credit. No credit report is required for any month in which a manufacturer neither earned nor used credit. Original invoices or copies of original invoices are not to be filed with the Department.

3) Credit Use or Misuse Causing Expiration of Credit. Credit used, whether properly or improperly, expires upon use and cannot be recreated once used. The manufacturer may be liable for tax, penalty and interest on the purchase of production related tangible personal property where expired credit was used, in accordance with provisions of the Uniform Penalty and Interest Act [35 ILCS 735]. The following represent examples of uses of credit that will result in expiration of the credit:

A) Failure to report credit or use of credit.

B) Failure to timely report credit or use of credit.

C) Use of credit prior to actually earning credit as described in subsection (a)(3) above.

D) Return of goods to supplier for full refund including tax where credit was tendered in payment of tax. Credit expires once used and cannot be recreated once used regardless of



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

reason for return.

- 4) A purchaser earning Manufacturer's Purchase Credit must maintain records, as to each purchase of manufacturing machinery and equipment on which the purchaser earned Manufacturer's Purchase Credit, that identify the following:

- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);
- B) The date of purchase, purchase price, and description of the exempt manufacturing machinery and equipment; and
- C) The amount of Manufacturer's Purchase Credit earned on that purchase.

- 5) A purchaser using Manufacturer's Purchase Credit must maintain records, as to each purchase of production related tangible personal property on which the purchaser used Manufacturer's Purchase Credit to satisfy the purchaser's Use Tax or Service Use Tax liability, that identify the following:

- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);
- B) The date of purchase, purchase price, and description of the production related tangible personal property; and
- C) The amount of Manufacturer's Purchase Credit used to satisfy the purchaser's Use Tax or Service Use Tax liability on that purchase.

- 6) As determined pursuant to audit by the Department, credit earned by purchase of exempt machinery and equipment that has not been timely and properly reported will result in expiration of the credit. Use of expired credit in this situation may result in an assessment for tax, penalty and interest on the subsequent purchase of production related tangible personal property. Credit that was properly reported when earned but was not timely and properly reported to the Department when used will likewise expire resulting in an assessment for tax, penalty and interest on the purchase of production related tangible personal property for which it was offered in payment of Use Tax or Service Use Tax liability.

- d) Reporting Manufacturer's Purchase Credit Earned or Used on June 30, 1995

- 1) The reporting requirements for Manufacturer's Purchase Credit were changed by Public Act 89-89, effective June 30, 1995. In order to provide consistent and easier reporting requirements for manufacturers utilizing Manufacturer's Purchase Credit and the Department's Administration of the Manufacturer's Purchase Credit program, manufacturers are required to report Manufacturer's Purchase Credit earned or used on June 30, 1995, under the methods described in subsection (c) of this Section. However, the Manufacturer's Purchase Credit earned or used on that date

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

will be subject to the provisions described in subsection (e) of this Section without the necessity of including those Manufacturer's Purchase Credits in an Annual Report of Manufacturer's Purchase Credit Earned or an Annual Report of Manufacturer's Purchase Credit Used.

- 2) A manufacturer filing an amended Annual Manufacturer's Purchase Credit Report under subsection (e)(7) of this Section that includes Manufacturer's Purchase Credit earned or used on June 30, 1995, must disclose that such report includes Manufacturer's Purchase Credit earned or used on June 30, 1995.

- e) Reporting Manufacturer's Purchase Credit Earned or Used for periods on or after July 1, 1995

- 1) In order to validate credit earned as the result of a qualifying purchase of exempt manufacturing machinery and equipment, the manufacturer must report credit earned to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Earned for each calendar year no later than the last day of the sixth month following the calendar year in which the Manufacturer's Purchase Credit is earned. The Annual Report of Manufacturer's Purchase Credit Earned shall be filed on forms prescribed or approved by the Department and shall state, for each month of the calendar year:

- A) The total purchase price of all purchases of exempt manufacturing machinery and equipment on which the credit was earned;

- B) The total State Use Tax or Service Use Tax which would have been due on those items;

- C) The percentage used to calculate the amount of credit earned;

- D) The amount of credit earned; and

- E) Such other information as the Department may reasonably require. (See Section 3-85 of the Use Tax Act.)

- 2) A purchaser earning Manufacturer's Purchase Credit must maintain records as to each purchase of manufacturing machinery and equipment on which the purchaser earned Manufacturer's Purchase Credit that identify the following:

- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);

- B) The date of purchase, purchase price, and description of the exempt manufacturing machinery and equipment; and

- C) The amount of Manufacturer's Purchase Credit earned on that purchase.

- 3) In order to validate credit used to satisfy the tax liability on purchases of production related tangible personal property, the manufacturer must report credit used to the Department by signing and filing an Annual Report of Manufacturer's Purchase Credit Used for each calendar year no later than the last day of the



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

sixth month following the calendar year in which the Manufacturer's Purchase Credit is used. The Annual Report of Manufacturer's Purchase Credit Used shall be filed on forms prescribed or approved by the Department and shall state, for each month of the calendar year:

- A) The total purchase price of all production related tangible personal property purchased from Illinois vendors or suppliers;
  - B) The total purchase price of all production related tangible personal property purchased from out-of-State vendors or suppliers;
  - C) The total amount of Manufacturer's Purchase Credit used during each month; and
  - D) Such other information as the Department may reasonably require. (See Section 3-85 of the Use Tax Act.)
- 4) A purchaser using Manufacturer's Purchase Credit must maintain records, as to each purchase of production related tangible personal property on which the purchaser used Manufacturer's Purchase Credit to satisfy the purchaser's Use Tax or Service Use Tax liability, that identify the following:
- A) The vendor or supplier (including, if applicable, either the vendor's or supplier's Illinois registration number or Federal Employer Identification Number);
  - B) The date of purchase, purchase price, and description of the production related tangible personal property; and
  - C) The amount of Manufacturer's Purchase Credit used to satisfy the purchaser's Use Tax or Service Use Tax liability on that purchase.

- 5) No Annual Report of Manufacturer's Purchase Credit Earned or Annual Report of Manufacturer's Purchase Credit Used may be filed with the Department before May 1, 1996.

- 6) A purchaser that fails to properly file an Annual Report of Manufacturer's Purchase Credit Earned or an Annual Report of Manufacturer's Purchase Credit Used with the Department by the last day of the sixth month following the end of the calendar year forfeits all Manufacturer's Purchase Credit earned or used for that calendar year, unless the purchaser establishes that the purchaser's failure to file was due to reasonable cause.

- 7) Annual Manufacturer's Purchase Credit reports may be amended to report and claim credit on qualifying purchases of manufacturing machinery and equipment not previously reported at any time before the credit would have expired, unless both the Department and the purchaser have agreed to an extension of the statute of limitations for the issuance of a Notice of Tax Liability as provided in Section 4 of the Retailers' Occupation Tax Act. However, such an agreed extension will not restore a credit that has previously been reported and has expired prior to the agreed extension. Manufacturer's Purchase Credit that had not been

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

previously reported and is included in an amended Annual Report submitted as a result of such an agreed extension will expire as provided in subsection (b)(8) of this Section or at the end of the agreed extension period, whichever is longer. If the time for assessment or refund has been extended by agreement, amended reports for a calendar year may be filed at any time prior to the date to which the statute of limitations for the calendar year or portion thereof has been extended. Manufacturer's Purchase Credit claimed on an amended report may be used to satisfy tax liability under the Use Tax Act or the Service Use Tax Act on:

- A) Qualifying purchases of production related tangible personal property made after the date the amended report is filed; or
- B) Amounts assessed by the Department on purchases made on or after January 1, 1995, of machinery and equipment that did not qualify for the exemption described in Section 130.330 of this Part, but would have qualified as production related tangible personal property. The credit will be applied to the tax portion of the assessment liability as of the date that the Department receives a written request by the purchaser directing the Department to apply the credit to the assessment liability.

- 8) A purchaser who used Manufacturer's Purchase Credit to satisfy the purchaser's Use Tax or Service Use Tax liability incurred on the purchase of property that is later determined not to qualify as production related tangible personal property may be liable for tax, penalty, and interest on the purchase of that property as of the date of the purchase. However, the purchaser is entitled to use such disallowed Manufacturer's Purchase Credit, so long as it has not expired, on qualifying purchases of production related tangible personal property not previously subject to credit usage.

- f) Retailers or Servicemen Accepting Manufacturer's Purchase Credit
  - 1) In order to accept Manufacturer's Purchase Credit from a manufacturer, the supplier or serviceman must obtain a Manufacturer's Purchase Credit certificate from the manufacturer unless the manufacturer has incorporated its certification into the manufacturer's purchase order as described below. The manufacturer may provide the certification on a form provided by the Department or on the manufacturer's own form containing the appropriate information. The certificate must be kept in the supplier's or serviceman's books and records, but need not be submitted to the Department with the supplier's or serviceman's return. A Manufacturer's Purchase Credit certificate must contain the following information:
    - A) A signed statement that the manufacturer is using available accumulated Manufacturer's Purchase Credit to satisfy all or part of the 6.25% portion of Use Tax or Service Use Tax liability incurred on a qualifying purchase of production

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

related tangible personal property:  
 B) The manufacturer's name and address;  
 C) The manufacturer's registration number, if registered;  
 D) The date of purchase of the production related tangible personal property; and  
 E) The credit being used. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.)

- 2) A manufacturer may incorporate the Manufacturer's Purchase Credit certification into the manufacturer's purchase order if all of the required information is contained within that purchase order.
- 3) Manufacturer's Purchase Credit accepted by the supplier or serviceman may be used by the supplier or serviceman to satisfy its liability incurred under the Retailers' Occupation Tax Act or Service Occupation Tax Act, so long as the supplier or serviceman complies with the following:

A) The supplier or serviceman may not accept credit in excess of 6.25% of the purchase price of qualifying production related tangible personal property. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.)

B) The supplier or serviceman must properly report acceptance of the credit to the Department in order to be entitled to use of the credit in satisfaction of Retailers' Occupation Tax or Service Occupation Tax liability.

## g) Lessors Earning and Using Manufacturer's Purchase Credit

- 1) A lessor leasing exempt manufacturing machinery and equipment to a manufacturer may earn Manufacturer's Purchase Credit when purchasing such machinery and equipment, in the same manner as a manufacturer.

2) A lessor leasing qualifying production related tangible personal property to a manufacturer may use Manufacturer's Purchase Credit when purchasing such qualifying property in the same manner as a manufacturer. (See Section 3-85 of the Use Tax Act and Section 3-70 of the Service Use Tax Act.)

3) A lessor of exempt machinery and equipment and qualifying production related tangible personal property must report the accumulation and use of credit in the same manner as required for manufacturers.

4) Since the Manufacturer's Purchase Credit is a non-transferable credit, a lessor may not use credit earned by a lessee, nor may a lessor transfer credit it has earned to a lessee.

(Source: Added at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: The Gas Revenue Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 470
- 3) Section Numbers: Proposed Action:  
470.171 New Section
- 4) Statutory Authority: 35 ILCS 615, 20 ILCS 2505/39b19
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends the Department's rules concerning the Gas Revenue Tax Act to provide rules on the exemption provided by Public Act 89-0417. An exemption is provided by Public Act 89-0417 for charges made to customers who acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995, except for those charges solely related to the local distribution of gas by a public utility.

6) Will this rulemaking replace any emergency rulemaking currently in effect?  
No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State Mandate, nor does it modify any existing State Mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rule may submit them in writing by no later than 45 days after publication of this notice to:

Terry D. Charlton  
Associate Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
217/782-6996

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Any small business, small municipality, or not-for-profit corporations that are subject to the Gas Revenue Tax

DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENT  
TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 470  
THE GAS REVENUE TAX ACT

Section	Definitions
470.101	Disposition of Tax Monies
470.105	Imposition of Tax
470.110	Effective Period of Act
470.115	Returns
470.120	Gross Amount of Transactions or Billings Basis of Tax
470.125	Certificate of Registration
470.130	Enterprise Zone Exemption
470.131	Books and Records
470.135	Claims to Recover Erroneously Paid Tax
470.140	Furnishing of Gas
470.145	Gas Sold to and by Building Operators
470.150	Transactions in Interstate Commerce
470.155	Sales of Gas to the United States Government
470.160	Services Furnished The State of Illinois, its Departments, Agencies, Counties, Municipalities or Other Political Subdivisions
470.165	Services Furnished to Religious, Scientific, Educational and Charitable Institutions
470.170	Exclusion for Charges Made to Customers Who Acquired Contractual Rights to Purchase Out-of-State Gas or Gas Services Prior to March 1, 1995
470.171	

470.175	Meter Readings
470.180	Services Furnished to Officers or Employees
470.185	Interdepartmental Transfers
470.190	Discounts, Penalties and Finance or Interest Charges
470.195	Sales of Appliances, Equipment or Services Subject to Other Tax Acts

AUTHORITY: Implementing the Gas Revenue Tax Act [35 ILCS 615] and authorized by Section 39b19 of the Civil Administrative Code of Illinois [20 ILCS 2505/39b19]

SOURCE: Gas Revenue Tax Regulations, adopted July 24, 1945; codified at 8 Ill. Reg. 8608; amended at 11 Ill. Reg. 18751, effective October 30, 1987; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 470.171 Exclusion for Charges Made to Customers Who Acquired Contractual Rights to Purchase Out-of-State Gas or Gas Services Prior to March 1, 1995

- a) Beginning with charges billed on and after January 1, 1996, any charge for gas or gas services to a customer who acquired contractual rights

DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENT

Act.

B) Reporting, bookkeeping or other procedures required for compliance: Minimal recordkeeping will be required. Entities subject to the Gas Revenue Tax Act will be required to retain certification presented by customers who qualify under the provisions of P.A. 89-0417.

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 1997

The full text of the Proposed Amendment begins on the next page:



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995, except for those charges solely related to the local distribution of gas by a public utility, is not subject to the tax imposed by the Gas Revenue Tax Act.

- b) For the purposes of this exclusion, the following terms have the following meanings:

"Charges solely related to the local distribution of gas by a public utility" means all charges subject to the Gas Revenue Tax Act, other than charges for gas and those charges that are reflected in the purchased gas adjustment clauses described in Section 9-220 of the Public Utilities Act [220 ILCS 5/9-220].

"Customer" means a person or legal entity identified on a taxpayer's books and records as being responsible for the payment of charges for gas or gas services provided by that taxpayer.

"Direct purchase of gas or gas services originating from an out-of-State source" means the direct purchase of gas or gas services from a source, such as a well head, located outside of this State and the purchase order must be accepted outside this State.

"Direct purchase of gas or gas services originating from an out-of-State supplier" means the direct purchase of gas or gas services from a supplier with an out-of-State physical presence and the purchase order must be accepted outside this State.

"Public utility" means every corporation, company, limited liability company, association, joint stock company, or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the conveyance of gas by pipeline.

"Supplier" means a person or entity that sells gas and has taken title to, or will take title to, the gas that is sold.

"Transportation account" means an account maintained by a public utility for the transportation of gas for a customer who has purchased the gas from a source other than the public utility.

- c) It is incumbent upon a taxpayer to establish that the exclusion described in this Section is available. Except as provided in

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

subsection (d), if a taxpayer maintains in its books and records the certification described in subsection (e), that certification will be prima facie proof that the exclusion is available to the taxpayer in reference to the customer listed on the certification. The obtaining of such a certification does not preclude the Department from going behind it and disregarding it if, in examining such customer's records, the Department finds that the certification was not true as to some fact or facts which show that the exclusion was not available. The Department has determined that customers who had transportation accounts with Illinois public utilities on or before March 1, 1995, almost certainly purchased gas from an out-of-State supplier or source on or before March 1, 1995. This determination is based upon the amount of gas produced from Illinois wells compared to the amount of gas consumed in Illinois. Consequently, if an Illinois public utility establishes by its books and records that a customer maintained a transportation account with that public utility on or before March 1, 1995, that documentation will be prima facie proof that the exclusion is available to that public utility in reference to that customer. The providing of such documentation does not preclude the Department from going behind it and disregarding it if, in examining the public utilities books and records or the customer's records, the Department finds that the exclusion was not available.

The certification described in subsection (c) must be a written certification signed by the customer stating:

- 1) the customer's name and address;
- 2) that the customer is purchasing the gas or gas services for its own use and that the gas or gas services will not be transferred to another entity;
- 3) that the customer had acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995;
- 4) the name and address of the out-of-State supplier or source; and
- 5) the name and address of the public utility in Illinois with whom the customer had a transportation account for the transportation of such gas or gas services.

f) The exclusion is available only with respect to the customer that acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-State supplier or source on or before March 1, 1995. A qualifying customer must be the same legal entity which acquired the qualifying contractual rights. Related entities, such as subsidiaries, affiliates, or holding companies, may not claim the exclusion based upon the qualifying contract of a separate legal entity. However, legal entities that have merely changed form, such as a partnership electing to become a corporation, that retain the exact same ownership are still considered the same legal entity for purposes of this exclusion. A legal entity that had acquired a qualifying contract and has merged with another legal entity or entities will still be considered the same legal entity if

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

the surviving entity is the entity that had acquired the qualifying contractual rights.

g) If a customer that acquired qualifying contractual rights on or before March 1, 1995 has multiple gas or gas service accounts, then the exclusion is available to all of that customer's gas and gas service accounts.

h) If the exclusion is claimed by a taxpayer, then that taxpayer will be liable for tax, penalty, and interest if it is later determined that the exclusion was not available. For example, if a taxpayer claims the exclusion based on an invalid certification from a customer, then the Department will recover the tax and any applicable penalty and interest from the taxpayer. The Department is unable to assess a customer who has given an invalid certification because customers do not incur Gas Revenue Tax liability and there is no Gas Revenue Use Tax. Consequently, when the exclusion has been improperly claimed and is disallowed, the Department will assess the taxpayer and the taxpayer is authorized to make an additional charge to the customer under Section 9-222 of the Public Utilities Act [220 ILCS 5/9-222].

(Source: Added at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Procedures of the Department of State Police Merit Board

2) Code Citation: 80 Ill. Adm. Code 150

3) Section Numbers: 150.210  
Proposed Action: Amendment

4) Statutory Authority: 20 ILCS 2610/9

5) A Complete Description of the Subjects and Issues Involved: Section 150.210 - This rule change will define the education requirement as an Associate in Arts or an Associate in Science Degree. This rule change will also include Accreditation Associations and establish the year 2000 as the target date to increase the education standard to a Bachelor's Degree.

6) Will this rulemaking replace any emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? No

9) Are there any other proposed rulemakings pending on this Part? No

10) Statement of Statewide Policy Objectives: Not Applicable

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit, within 45 days after this issue of the *Illinois Register*, written comments to:

Mr. James E. Seiber, Executive Director  
Department of State Police Merit Board  
3180 Adloff Lane, Suite 100  
Springfield, IL 62703  
217/786-6240

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF PROPOSED AMENDMENT

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking was unanticipated at the time of the two most recent regulatory agendas.

The full text of the Proposed Amendment begins on the next page:

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF PROPOSED AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE A: MERIT EMPLOYMENT SYSTEMS  
CHAPTER IV: DEPARTMENT OF STATE POLICE MERIT BOARD

## PART 150

## PROCEDURES OF THE DEPARTMENT OF STATE POLICE MERIT BOARD

## SUBPART A: DEFINITIONS

Section  
150.10  
Definitions

## SUBPART B: CERTIFICATION FOR APPOINTMENT

Section  
150.210 Qualifications  
150.220 Selection Procedures  
150.230 Recertification  
150.240 Probationary Period

## SUBPART C: CLASSIFICATION OF RANKS

Section  
150.310 Ranks  
150.320 Interdivisional Transfers

## SUBPART D: CERTIFICATION FOR PROMOTION

Section  
150.410 Board Responsibilities  
150.420 Eligibility  
150.430 Procedures  
150.440 Promotion Probationary Period (Repealed)

## SUBPART E: DISCIPLINARY ACTION

Section  
150.510 Merit Board Jurisdiction  
150.520 Discipline Afforded the Deputy Director  
150.530 Notification to Suspended Officer  
150.540 Petition for Review  
150.550 Form and Content of Petition for Review  
150.560 Filing Procedures  
150.565 Procedure for Processing Petition for Review  
150.570 Director's Review  
150.575 Discipline Afforded the Director  
150.580 Complaint Procedures  
150.585 Scheduling the Hearing



## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF PROPOSED AMENDMENT

150.590 Notification to Officer

## SUBPART F: HEARINGS

## Section

150.610 Board Docket  
 150.620 Hearing Officer  
 150.630 Pre-hearing Conferences  
 150.640 Motions  
 150.650 Subpoenas  
 150.655 Request for Witnesses or Documents  
 150.660 Evidence Depositions  
 150.665 Hearing Procedures  
 150.670 Continuances and Extensions of Time  
 150.675 Computation of Time  
 150.680 Decisions of the Board  
 150.685 Service and Form of Papers

## APPENDIX A

## Vision Standards

## APPENDIX B

## Physical Fitness Standards

**AUTHORITY:** Implementing Sections 3 through 14 and authorized by Section 8 of the State Police Act [20 ILCS 2610/3 through 14].

**SOURCE:** Emergency rule adopted at 2 Ill. Reg. 10, p. 206, effective February 24, 1978, for a maximum of 150 days; emergency amendment at 2 Ill. Reg. 32, p. 37, effective July 27, 1978, for a maximum of 150 days; emergency amendments at 2 Ill. Reg. 51, p. 100, effective December 7, 1978, for a maximum of 150 days; adopted at 2 Ill. Reg. 52, p. 422, effective December 25, 1978; amended at 3 Ill. Reg. 47, p. 86, effective November 12, 1979; emergency amendment at 4 Ill. Reg. 6, p. 284, effective February 1, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 2739, effective March 2, 1981; amended at 6 Ill. Reg. 10954, effective August 31, 1982; codified at 7 Ill. Reg. 9900; amended at 7 Ill. Reg. 379, effective November 2, 1983; emergency amendment at 8 Ill. Reg. 379, effective December 27, 1983, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 3038, effective February 23, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7894, effective May 23, 1984; amended at 9 Ill. Reg. 3721, effective March 13, 1985; amended at 9 Ill. Reg. 14328, effective September 6, 1985; recodified from the Department of Law Enforcement Merit Board to the Department of State Police Merit Board pursuant to Executive Order 85-3, effective July 1, 1985, at 10 Ill. Reg. 3283; amended at 10 Ill. Reg. 17752, effective October 1, 1986; amended at 11 Ill. Reg. 7760, effective April 14, 1987; amended at 11 Ill. Reg. 18303, effective October 26, 1987; amended at 12 Ill. Reg. 1118, effective December 24, 1987; amended at 12 Ill. Reg. 10736, effective June 13, 1988; amended at 13 Ill. Reg. 5201, effective April 3, 1989; emergency amendment at 13 Ill. Reg. 16607, effective September 29, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 19592, effective December 1, 1989; amended at 14 Ill. Reg. 3679, effective February 23, 1990; amended at 15 Ill.

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF PROPOSED AMENDMENT

Reg. 11007, effective July 15, 1991; amended at 16 Ill. Reg. 11835, effective July 13, 1992; emergency amendment at 16 Ill. Reg. 17372, effective October 29, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 9716, effective June 10, 1993; expedited correction at 17 Ill. Reg. 14684, effective June 10, 1993; amended at 17 Ill. Reg. 21079, effective November 22, 1993; amended at 19 Ill. Reg. 6679, effective May 1, 1995; amended at 19 Ill. Reg. 7970, effective June 1, 1995; amended at 20 Ill. Reg. 404, effective December 22, 1995; emergency amendment at 20 Ill. Reg. 8062, effective June 4, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 13663, effective October 3, 1996; amended at 20 Ill. Reg. 14640, effective October 25, 1996; amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: CERTIFICATION FOR APPOINTMENT

## Section 150.210 Qualifications

- a) The Board shall certify to the Director in writing qualified applicants for appointment as sworn officers to the Department. Qualified applicants shall:
- 1) Be at least 21 ~~twenty-one~~ years of age. Persons 20 ~~twenty~~ years of age may be certified if they have successfully completed 2 years (60 semester hours, 90 quarter hours) of law enforcement studies at an accredited college or university.
  - 2) Have completed, with an average grade of C or better, an Associate in Arts or Associate in Science Degree or equivalent 60 semester-hours, ~~90~~ ~~quarter-hours~~ ~~or~~ ~~any~~ ~~combination~~ ~~of~~ ~~semester/quarter-hours~~ ~~totaling~~ ~~2~~ ~~years~~ ~~of~~ ~~education~~ from an accredited college or university. The college or university must be accredited by one of the following associations:
    - A) Middle States Association of Colleges and Schools;
    - B) North Central Association of Colleges and Schools;
    - C) New England Association of Schools and Colleges;
    - D) Northwest Association of Schools and Colleges;
    - E) Southern Association of Colleges and Schools;
    - F) Western Association of Schools and Colleges.
  - 3) Be a citizen of the United States with no felony convictions.
  - 4) Accept assignment anywhere in the State.
  - 5) Possess a valid driver's license at time of application.
  - 6) Successfully complete mental and physical and medical tests and a background investigation as prescribed by the Board. (See Section 150-Appendix A and B of this Part.)
- b) The Board may certify more applicants than there are vacant positions at the time of certification. Such certified applicants shall be eligible for appointment for a period of time designated by the Board.
- c) Effective in the year 2000, qualified applicants shall have completed, with a C average or better, a Bachelor's Degree from a college or university that has been accredited by one of the above listed accreditation associations.

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF PROPOSED AMENDMENT

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT ON AGING

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Community Based Residential Facilities Demonstration Project
- 2) Code Citation: 89 Ill. Adm. Code 280
- 3) Section Numbers: Adopted Action:  
280.50 New Section  
280.100 New Section  
280.200 New Section
- 4) Statutory Authority: 20 ILCS 105/4.01 (11), 4.02b and 5.02.
- 5) Effective Date of Amendment(s): June 1, 1997
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? Yes
- 8) Date Filed in Agency's Principal Office: May 23, 1997
- 9) Notice of Proposal Published in Illinois Register: January 24, 1997; 21 Ill. Reg. 1110
- 10) Has JCAR issued a Statement of Objections to this amendment(s)? No
- 11) Difference(s) between proposal and final version: The following reflects the substantive changes:

- 1) Rule Section 280.100, New Subsection (b) "The Community Based Residential Facilities Demonstration Project is funded through the Department's Community Care Program (CCP), therefore all applicable CCP rules (89 Ill. Adm. Code 240) shall apply to this Part."
- 2) Rule Section 280.100 New Subsection (c) "The Director shall appoint individuals to serve in an advisory capacity to identify potential issues regarding the CBRFDP, based upon the following:
  - 1) provider of service representation, as well as representatives from the applicable Area Agency on Aging;
  - 2) non-provider representatives from policy/advocacy/other services/research organizations; and
  - 3) willingness to serve."
- 3) Rule Section 280.200, Subsection (a)(2), "All CBRFDP minimum service components/requirements as follows:
  - A) CBRFDP facilities must provide all of the following:
    - i) Meals provided in a congregate dining room and/or tenant's own room and prepared by the facility or an outside contractor;
    - ii) Routine housekeeping, which includes, but is not limited

DEPARTMENT ON AGING  
NOTICE OF ADOPTED RULES

DEPARTMENT ON AGING  
NOTICE OF ADOPTED RULES

trips, classes, lectures and parties in or outside the facility.

3) all statements and/or proposals delineated by the facility in the Request for Application for CBRFDP and all subsequent CBRFDP contract requirements.

b) All facilities participating in the CBRFDP shall execute a written contract with each individual tenant or the legal representative of that tenant. The tenant or tenant's legal representative must be given a copy of the contract, all supporting documents and attachments and any changes when they occur. The contract format shall be approved by the Department and shall include at least the following elements in the body or through supporting documents or attachments:

- 1) Name, street address and mailing address;
- 2) The name and mailing address of the owners of the facility and, if the owners are not a natural person, identification of the type of business entity of the owners;
- 3) The name and mailing address of the managing agency, through management agreement or lease agreement, of the facility, if different from the owners;
- 4) The name and address of at least one natural person who is authorized to accept service on behalf of the owners and managing agent;
- 5) Statements describing the registration of the facility and the licensure status of any provider providing health related or supportive services for the individual tenant under an arrangement with the facility;
- 6) Term of the contract;
- 7) The cost to be paid by the tenant and a description of the services to be provided;
- 8) Description of any additional services to be provided, for an additional fee, by the facility directly or by a third party provider through arrangements with the facility;
- 9) Fee schedules outlining the cost of any additional services;
- 10) Description of the process through which the contract may be modified, amended or terminated;
- 11) Description of the facility's complaint resolution process that must be available to all tenants;
- 12) The tenant's designated representative, if any;
- 13) The requirements for residency and receipt of services;
- 14) Billing and payment procedures and requirements;
- 15) A statement regarding the ability of the tenants to receive services from service providers with whom the facility does not have a contractual agreement. Such a statement may disclaim liability on the part of the facility for such services;
- 16) A statement regarding the availability of public funds for payment for residence or services in the facility;

to, vacuuming, dusting and cleaning the kitchen and bathroom(s) of the tenant's unit;

iii) Security provided 24 hours each day and implemented by locked entrances and/or building or contract personnel. All tenants shall have 24 hour access to the building;

iv) Emergency response system in place 24 hours each day by which a tenant can notify building management, an emergency response provider, or others able to respond to his/her need for assistance; and

v) Laundry service, which must include, at a minimum, the laundering of tenant's linens.

B) CBRFDP facilities must directly provide or arrange for another entity to provide, with the consent of the tenant and/or tenant's representative, one or more of the following:

- i) Personal care, which is one or more of the following: assistance with bathing, dressing, grooming, ambulation, toileting, transferring, meal planning and/or personal laundry.
- ii) Medication management, which is one or more of the following: reminders to take medication, monitoring of tenant's medications, storage of medications and/or assisting tenant with medications set up by a family member or nurse.
- iii) Money management, which is one or more of the following: assisting tenant with paying bills, balancing accounts and/or referrals to a financial institution. All facilities providing money management services shall maintain a fidelity bond or equivalent insurance. Such bond or equivalent insurance shall be sufficient to cover the loss of funds caused by any loss, mistake, misuse or theft by the volunteers or staff directly providing the service.
- iv) Intermittent health services, which are one or more of the following: medication administration, dressing changes, catheter care, therapies and other medical, nursing or rehabilitative care provided by personnel licensed pursuant to the Illinois Home Health Agency Code [210 ILCS 55] and by the Illinois Department of Professional Regulation.

C) CBRFDP facilities may provide any or all of the following:

- i) Transportation, which is a car and/or van service to shopping, medical appointment, etc.
- ii) Health assessment, which is a health history, physical examination, risk profile and/or screening by a licensed professional.
- iii) Counseling for health, social services and nutrition by a licensed professional.
- iv) Social/educational activities, which are arrangements for



## DEPARTMENT ON AGING

## NOTICE OF ADOPTED RULES

17) A statement that acknowledges that all tenants of the facility maintain their rights. Some of these rights include, but are not limited to:

- A) Constitutional rights;
- B) The right to participate or not to participate in religious services of one's choice;
- C) The right to retain and use personal property and a place to store personal items that is locked and secure;
- D) The right to refuse services and to be advised of the consequences of that refusal;
- E) The right to respect bodily privacy and dignity at all times, especially during care and treatment;
- F) The right to privacy with regard to mail, telephone calls and visitors;
- G) The right to vote;
- H) The right to be free of retaliation for criticizing the facility or making complaints to appropriate agencies;
- I) The right to be free of restraints;
- J) The right to be free of abuse and neglect;
- K) The right to confidentiality of personal files maintained by the management; and
- L) The right to access personal files maintained by management;

18) A statement that acknowledges that all applicants and tenants will be required to be assessed by their local Case Coordination Unit and that information will be gathered in order to further evaluate the CBRFDPs; and

19) A statement that acknowledges that all tenants have the right to contact the Department through the Senior Helpline regarding any complaints with regards to services provided by the facility or other contracted service providers. This statement must also include information on the right of the individual to appeal actions taken by:

- A) The Case Coordination Unit;
- B) A provider of service; or
- C) The Department on Aging."

4) Rule Section 280.200 Subsection (c)(2) has been clarified to add "exhibit a need for long term care pursuant to 89 Ill. Adm. Code 240.727."

5) Rule Section 280.200 Subsection (d) has been clarified to add "Appeals shall be conducted pursuant to 89 Ill. Adm. Code 240.400 through 240.485."

12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency amendment currently in effect? No

## DEPARTMENT ON AGING

## NOTICE OF ADOPTED RULES

14) Are there any proposed amendments pending on this Part? No

15) Summary and Purpose of Amendment(s): The purpose of the rulemaking is to establish three sites under the Community Based Residential Facilities Demonstration Project (CBRFPD). Pursuant to Public Act 89-530, the Department is mandated, in consultation with the Illinois Department of Public Health and the Illinois Department of Public Aid, to promulgate rules and develop criteria for the Demonstration Project. CBRFPD shall terminate when an assisted living or similar client focused residential program is established by law or on June 30, 2001, whichever is earlier.

16) Information and questions regarding this adopted amendment shall be directed to:

Ms. Pamela W. Balmer, Assistant  
Office of General Counsel  
Illinois Department on Aging  
421 East Capitol Avenue #100  
Springfield, IL 62701-1789  
(217) 785-3346

The full text of the Adopted Rule(s) begins on the next page:

DEPARTMENT ON AGING  
NOTICE OF ADOPTED RULES

- the following:
- 1) provider of service representation, as well as representatives from the applicable Area Agency on Aging;
  - 2) non-provider representatives from policy/advocacy/other services/research organizations; and
  - 3) willingness to serve.
- d) The Community Based Residential Facilities demonstration project shall terminate when an assisted living or similar client focused residential program is established by law or on June 30, 2001, whichever is earlier (Section 4.02b of the Illinois Act on the Aging [20 ILCS 105/4.02b]).
- e) The purpose of this Part is to authorize the establishment and development of service criteria and facility standards for no more than three Community Based Residential Facilities Demonstration Projects statewide.

SUBPART B: ELIGIBILITY

Section 280.200 Eligibility Requirements

The project shall meet the following criteria:

- a) Facilities participating in the Community Based Residential Facilities Demonstration Project (CBRFPD) shall comply with:
  - 1) all current local, State and federal residential statutes, standards and/or regulations for multi-unit dwellings;
- 2) all CBRFPD minimum service components/requirements as follows:
  - A) CBRFPD facilities must provide all of the following:
    - i) Meals provided in a congregate dining room and/or the tenant's own room and prepared by the facility or an outside contractor;
    - ii) Routine housekeeping, which includes, but is not limited to, vacuuming, dusting and cleaning the kitchen and bathroom(s) of the tenant's unit;
    - iii) Security provided 24 hours each day and implemented by locked entrances and/or building or contract personnel. All tenants shall have 24 hour access to the building;
    - iv) Emergency response system in place 24 hours each day by which a tenant can notify building management, an emergency response provider, or others able to respond to his/her need for assistance; and
    - v) Laundry service, which must include, at a minimum, the laundering of tenant's linens.
  - B) CBRFPD facilities must directly provide or arrange for another entity to provide, with the consent of the tenant and/or tenant's representative, one or more of the following:
    - i) Personal care, which is one or more of the following:

DEPARTMENT ON AGING  
NOTICE OF ADOPTED RULES

TITLE 89: SOCIAL SERVICES  
CHAPTER II: DEPARTMENT ON AGING

PART 280  
COMMUNITY BASED RESIDENTIAL FACILITIES DEMONSTRATION PROJECT

SUBPART A: PROJECT OVERVIEW

Section  
280.50 Definitions  
280.100 Authority and Purpose

SUBPART B: ELIGIBILITY

Section  
280.200 Eligibility Requirements

AUTHORITY: Implementing Section 4.02b and authorized by Section 4.01(11) of the Illinois Act on the Aging [20 ILCS 105/4.02b and 4.01(11)].

SOURCE: Adopted at 21 Ill. Reg. 6831, effective

SUBPART A: PROJECT OVERVIEW

Section 280.50 Definitions

"Department" means the Illinois Department on Aging.

"Program Plan" means a detailed explanation of the types of service(s) the project shall provide, the methods by which services may or may not be considered for residency, and a listing of client rights including provision for contracts, liability insurance and discharge procedures.

"Project" means a location participating in the Community Based Residential Facilities Demonstration Project.

Section 280.100 Authority and Purpose

- a) This Part is promulgated to develop and implement the criteria for the Community Based Residential Facilities Demonstration Project.
- b) The Community Based Residential Facilities Demonstration Project is funded through the Department's Community Care Program (CCP), therefore all applicable CCP rules (89 Ill. Adm. Code 240) shall apply to this Part.
- c) The Director shall appoint individuals to serve in an advisory capacity to identify potential issues regarding the CBRFPD, based upon

## DEPARTMENT ON AGING

## NOTICE OF ADOPTED RULES

assistance with bathing, dressing, grooming, ambulation, toileting, transferring, meal planning and/or personal laundry.

ii) Medication management, which is one or more of the following: reminders to take medication, monitoring of tenant's medications, storage of medications and/or assisting tenant with medications set up by a family member or nurse.

iii) Money management, which is one or more of the following: assisting tenant with paying bills, balancing accounts and/or referrals to a financial institution. All facilities providing money management services shall maintain a fidelity bond or equivalent insurance. Such bond or equivalent insurance shall be sufficient to cover the loss of funds caused by any loss, mistake, misuse or theft by the volunteers or staff directly providing the service.

iv) Intermittent health services, which are one or more of the following: medication administration, dressing changes, catheter care, therapies and other medical, nursing or rehabilitative care provided by personnel licensed pursuant to the Illinois Home Health Agency Code [210 ILCS 55] and by the Illinois Department of Professional Regulation.

C) CBRFDP facilities may provide any or all of the following:

- i) Transportation, which is a car and/or van service to shopping, medical appointment, etc.
- ii) Health assessment, which is a health history, physical examination, risk profile and/or screening by a licensed professional.
- iii) Counseling for health, social services and nutrition by a licensed professional.
- iv) Social/educational activities, which are arrangements for trips, classes, lectures and parties in or outside the facility.

3) all statements and/or proposals delineated by the facility in the Request for Application for CBRFDP and all subsequent CBRFDP contract requirements.

b) All facilities participating in the CBRFDP shall execute a written contract with each individual tenant or the legal representative of that tenant. The tenant or tenant's legal representative must be given a copy of the contract, all supporting documents and attachments and any changes when any occur. The contract format shall be approved by the Department and shall include at least the following elements in the body or through supporting documents or attachments:

- 1) Name, street address and mailing address;
- 2) The name and mailing address of the owners of the facility and,

## DEPARTMENT ON AGING

## NOTICE OF ADOPTED RULES

if the owners are not a natural person, identification of the type of business entity of the owners;

3) The name and mailing address of the managing agency, through management agreement or lease agreement, of the facility, if different from the owners;

4) The name and address of at least one natural person who is authorized to accept service on behalf of the owners and managing agent;

5) Statements describing the registration of the facility and the licensure status of any provider providing health related or supportive services for the individual tenant under an arrangement with the facility;

6) Term of the contract;

7) The cost to be paid by the tenant and a description of the services to be provided;

8) Description of any additional services to be provided, for an additional fee, by the facility directly or by a third party provider through arrangements with the facility;

9) Fee schedules outlining the cost of any additional services;

10) Description of the process through which the contract may be modified, amended or terminated;

11) Description of the facility's complaint resolution process that must be available to all tenants;

12) The tenant's designated representative, if any;

13) The requirements for residency and receipt of services;

14) Billing and payment procedures and requirements;

15) A statement regarding the ability of the tenants to receive services from service providers with whom the facility does not have a contractual agreement. Such a statement may disclaim liability on the part of the facility for such services;

16) A statement regarding the availability of public funds for payment for residence or services in the facility;

17) A statement that acknowledges that all tenants of the facility maintain their rights. Some of these rights include, but are not limited to:

- A) Constitutional rights;
- B) The right to participate or not to participate in religious services of one's choice;
- C) The right to retain and use personal property and a place to store personal items that is locked and secure;
- D) The right to refuse services and to be advised of the consequences of that refusal;
- E) The right to respect bodily privacy and dignity at all times, especially during care and treatment;
- F) The right to privacy with regard to mail, telephone calls and visitors;
- G) The right to vote;
- H) The right to be free of retaliation for criticizing the



## DEPARTMENT ON AGING

## NOTICE OF ADOPTED RULES

- facility or making complaints to appropriate agencies;
- I) The right to be free of restraints;
  - J) The right to be free of abuse and neglect;
  - K) The right to confidentiality of personal files maintained by the management; and
  - L) The right to access personal files maintained by management;
- 18) A statement that acknowledges that all applicants and tenants will be required to be assessed by their local Case Coordination Unit and that information will be gathered in order to further evaluate the CBRFDPs; and
- 19) A statement that acknowledges that all tenants have the right to contact the Department through the Senior Helpline regarding any complaints with regards to services provided by the facility or other contracted service providers. This statement must also include information on the right of the individual to appeal actions taken by:
- A) The Case Coordination Unit;
  - B) A provider of service; or
  - C) The Department on Aging.
- c) Individuals participating in the CBRFDP shall:
- 1) be at least 60 years of age;
  - 2) exhibit a need for long term care pursuant to 89 Ill. Adm. Code 240.727;
  - 3) be subject to a needs assessment and development of a Plan of Care, by the appropriate Case Coordination Unit (CCU), in accordance with Community Care Program (CCP) time frames and requirements; and
  - 4) be subject to the eligibility requirements for any and all services provided under the CBRFDP.
- d) All individuals who participate in the project shall have standard CCP appeal rights of the denial or alteration of service(s) designated by the Plan of Care under the CBRFDP. Appeals shall be conducted pursuant to 89 Ill. Adm. Code 240.400 through 240.485.
- e) If a project is providing *sheltered care*, or *other nursing home care as defined in the Nursing Home Care Act* [210 ILCS 45] (Section 4.02(b) of the Illinois Act on the Aging [20 ILCS 105/4.02(b)]), the project shall apply for a waiver from the Illinois Department of Public Health, within 90 days after Department approval, in the form and manner prescribed by the Illinois Department of Public Health.
- f) If the Illinois Department of Public Health denies or withdraws a project's waiver, the Department shall immediately terminate the project from the demonstration.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: State Mandates Program
- 2) Code Citation: 53 Ill. Adm. Code 200
- 3) Section Numbers:

200.10	New Section
200.20	New Section
200.30	New Section
200.40	New Section
200.50	New Section
200.60	New Section
- 4) Statutory Authority: Implementing and authorized by Sections 3(b) and 4(a)(2) of the State Mandates Act [30 ILCS 805/3(b) and 4(a)(2)] and authorized by Section 46.42 of the Civil Administrative Code of Illinois [20 ILCS 605/46.42].
- 5) Effective Date of Amendments: May 20, 1997
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference: No
- 8) Date Filed in Agency's Principal Office: May 20, 1997
- 9) Notice of Proposal Published in Illinois Register: December 20, 1996 (20 Ill Reg 15839)
- 10) Has JCAR issued a Statement of Objections to these amendments? No
- 11) Differences between proposal and final version: Only technical changes indicated by the Joint Committee on Administrative Rules (JCAR) were made in the final version of the rulemaking.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Not Applicable
- 13) Will these amendments replace an emergency amendment currently in effect? No
- 14) Are there any amendments pending on this part: No
- 15) A Complete Description of the Subjects and Issues Involved: This proposed rulemaking will enable units of local government to file a request for mandate determination from the Department of Commerce and Community Affairs when the General Assembly has made no appropriation for reimbursement.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF ADOPTED RULES

- 16) Information and questions regarding these adopted amendments shall be directed to:

Ms. Molly Elmore, Manager  
Policy Development, Planning and Research  
Department of Commerce and Community Affairs  
620 East Adams Street, 6th Floor  
Springfield, IL 62701  
(217) 785-6315  
T.D.D. Number: (217) 785-6055

The full text of the Adopted Amendments begins on the next page:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF ADOPTED RULES

TITLE 53: INTERGOVERNMENTAL RELATIONS  
CHAPTER II: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

PART 200  
STATE MANDATES PROGRAM

Section	Source of Authority
200.10	Applicability
200.20	Definitions
200.30	Parties to a Claim for Reimbursement or a Request for Determination of Mandate
200.40	Claims for Reimbursement
200.50	Requests for Determination of Mandate
200.60	

AUTHORITY: Implementing and authorized by Sections 3(b) and 4(a)(2) of the State Mandates Act [30 ILCS 805/3(b) and 4(a)(2)] and authorized by Section 46.42 of the Civil Administrative Code of Illinois [20 ILCS 605/46.42].

SOURCE: Adopted at 21 Ill. Reg. 6841, effective MAY 21 2000.

#### Section 200.10 Source of Authority

- a) The Department of Commerce and Community Affairs (Department) is authorized by Section 46.42 of the Civil Administrative Code of Illinois (Part 7) [20 ILCS 605/46.42] to make such rules and regulations as may be necessary to carry out its duties.
- b) These rules are promulgated pursuant to the State Mandates Act [30 ILCS 805] in the manner required by the Illinois Administrative Procedure Act [5 ILCS 100].

#### Section 200.20 Applicability

These rules shall apply to all claims for Reimbursement and Requests for Determination of Mandate filed with the Department by one or more units of local government, as authorized by the State Mandates Act.

#### Section 200.30 Definitions

"State mandate" means any State-initiated statutory or "executive action" that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a court other than any order enforcing such statutory or executive action, or legislation enacted to comply with a federal mandate. State mandates may be reimbursable or nonreimbursable; however, a State mandate is not reimbursable unless the General Assembly has appropriated funds from which a local government may be reimbursed for its costs of

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

NOTICE OF ADOPTED RULES

complying with the State mandate.

**Section 200.40 Parties to a Claim for Reimbursement or a Request for Determination of Mandate**

Subject to the provisions of Section 200.50 (Claims for Reimbursement) and Section 200.60 (Requests for Determination of Mandate) of this Part, one or more units of local government, other than a school district or community college district, may submit to the Department a Claim for Reimbursement or Request for Determination of Mandate.

**Section 200.50 Claims for Reimbursement**

a) Within 60 days after the effective date of a new or expanded State mandate, one or more units of local government may submit to the Department a Claim for Reimbursement to recover certain costs associated with the implementation of a State mandate, provided the General Assembly has appropriated funds from which such reimbursement can be made.

b) During the initial fiscal year during which reimbursement is authorized, the one or more units of local government submitting a single Claim for Reimbursement to the Department shall include in the claim an estimate of the costs attributable to complying with the State mandate for the balance of the fiscal year.

c) For the subsequent fiscal years during which reimbursement is authorized, the one or more units of local government submitting a single Claim for Reimbursement to the Department must do so on or before October 1 of each calendar year. Such claim shall include an estimate of the costs attributable to complying with the State mandate throughout the entire fiscal year.

**Section 200.60 Requests for Determination of Mandate**

In cases in which the General Assembly has not appropriated funds from which units of local government may be reimbursed for costs attributable to a new or expanded State mandate, one or more units of local government may submit to the Department a Request for Determination of Mandate. In response to a Request for Determination of Mandate, the Department shall determine whether the Public Act or executive action which is the subject of the request constitutes a State mandate, and if so, the statewide cost of implementation (see Section 8 of the Act).

DEPARTMENT OF LABOR

NOTICE OF ADOPTED RULES

1) Heading of the Part: Whistleblower Protection

2) Code Citation: 56 Ill. Adm. Code 353

3) Section Number: Adopted Action:  
353.100 New Section  
353.110 New Section  
353.200 New Section  
353.300 New Section  
353.310 New Section  
353.320 New Section  
353.330 New Section  
353.340 New Section  
353.350 New Section

4) Section Authority: Implementing and authorized by Section 11b (c) of the Prevailing Wage Act [820 ILCS 130/11b (c)].

5) Effective Date of Rules: May 20, 1997

6) Does this rulemaking contain an automatic repeal date? No

7) Do these rules contain incorporations by reference? No

8) Date filed in Agency's Principal Office: May 20, 1997

9) Notice of Proposal Published in Illinois Register: February 7, 1997 (21 Ill. Reg. 1500)

10) Has JCAR issued a Statement of Objections to these Rules? No

11) Difference(s) between proposal and final version:

1. In line 19, changed "Hearing" to "Hearings".
2. In lines 21, 31, 40, 47, 60, 71, 110, and 154, "section" changed to "Section".
3. In line 32, omitted commas after "to".
4. In line 125, changed "of" to "after".
5. In line 156, correct ILCS cite.
6. In line 245, change "advised" to "advise".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter by JCAR? Yes

13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? No



## DEPARTMENT OF LABOR

## NOTICE OF ADOPTED RULES

15) Summary and purpose of Rulemaking: The rulemaking implements Public Act 88-359, Section 5 (codified at 820 ILCS 130/11b), an amendment to the Prevailing Wage Act [820 ILCS 130], that requires the Director of Labor (in a manner s/he deems appropriate) to investigate the alleged discharge, discipline, or discrimination against "whistleblowers" in violation of Section 11b (a) of the Act, and to take affirmative action to remedy such conduct, including but not limited to, ordering the removal of any information contained in personnel files and the rehiring or reinstatement of whistleblowers with backpay.

16) Information and questions regarding these adopted amendments shall be directed to:

Scott D. Miller  
Chief Legal Counsel  
Illinois Department of Labor  
160 North LaSalle Street  
Suite C-1300  
Chicago, IL 60601  
(312) 793-1811

The full text of the Adopted Rules begins on the next page:

## DEPARTMENT OF LABOR

## NOTICE OF ADOPTED RULES

TITLE 56: LABOR AND EMPLOYMENT  
CHAPTER I: DEPARTMENT OF LABOR  
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 353  
WHISTLEBLOWER PROTECTION

SUBPART A: GENERAL PROVISIONS

Section  
353.100 Purpose of this Part  
353.110 Definitions

SUBPART B: OBLIGATIONS AND PROHIBITED CONDUCT

Section  
353.200 Obligations and Prohibited Conduct

SUBPART C: ADMINISTRATION AND ENFORCEMENT

Section  
353.300 Filing an Application  
353.310 Investigation  
353.320 Issuance of Decision  
353.330 Request for Hearing  
353.340 Hearings  
353.350 Judicial Review

AUTHORITY: Implementing and authorized by Section 11b(c) of the Prevailing Wage Act [820 ILCS 130/11b(c)].

SOURCE: Adopted at 21 Ill. Reg. 8845, effective MAY 24, 2001.

SUBPART A: GENERAL PROVISIONS

### Section 353.100 Purpose of this Part

This Part implements Public Act 88-359, Section 5 (codified at 820 ILCS 130/11b), an amendment to the Prevailing Wage Act [820 ILCS 130], that requires the Director of Labor (in a manner s/he deems appropriate) to investigate the alleged discharge, discipline, or discrimination against "whistleblowers" in violation of Section 11b(a) of the Act, and to take affirmative action to remedy such conduct, including but not limited to ordering the removal of any information contained in personnel files and the rehiring or reinstatement of whistleblowers with backpay.

### Section 353.110 Definitions

DEPARTMENT OF LABOR  
NOTICE OF ADOPTED RULES

11b(a) of the Act)

SUBPART C: ADMINISTRATION AND ENFORCEMENT

Section 353.300 Filing an Application

- a) An application may be filed by a Complainant, by his/her duly authorized representative, or by his/her attorney.
- b) An application shall be filed with the Director at the Department's Chicago or Springfield office.
- c) An application shall be filed within 30 days after the alleged discharge, discipline, or discrimination occurred.
- d) Filing requirements shall be construed to mean the Director's receipt of the application. The Complainant shall file his/her application by telephone facsimile, telegram, hand delivery, or next-day delivery service, or U.S. Mail. Proof that the filing was dispatched by the prescribed date shall be prima facie proof that the filing was timely received.

Section 353.310 Investigation

- a) Upon receipt of an application under this Part, the Director shall notify the Respondent of the existence of the application, and furnish the Respondent with a copy of the application to enable a reasonable response.
- b) The Respondent's response must be filed with the Director at the Department's Chicago office within 10 days after notification.
- c) The Director shall investigate and gather data concerning such case, and as part of the investigation may enter and inspect such places and records (and make copies thereof), may interview the Respondent and the Respondent's employees, and may require the production of any documentary or other evidence deemed necessary to determine whether prohibited conduct has occurred.
- d) The Director may issue an administrative subpoena to compel the attendance of a witness and/or the production of documents upon his/her determination that the information to be produced by a subpoena is necessary and relevant to his/her investigation, and that the Director cannot obtain the information by any other reasonable means.
- e) Investigations under this Part shall be conducted in a manner which protects the confidentiality of any person, other than the Complainant, who provides information on a confidential basis.

Section 353.320 Issuance of Decision

- a) The Director shall make findings of fact, including whether a violation of Section 11b(a) of the Act occurred. The Director shall issue his/her findings in a decision by certified mail to the parties.

DEPARTMENT OF LABOR  
NOTICE OF ADOPTED RULES

"Act" means the Prevailing Wage Act [820 ILCS 130].

"Application" means a signed and completed form (provided by the Director of the Illinois Department of Labor) requesting the Director of Labor to review a discharge, discipline or discrimination that allegedly violates Section 11b(a) of the Act.

"Authorized representative of employees" means an individual from a union or collective bargaining unit who exercises any rights afforded by the Act on behalf of him/herself or a member of the union or collective bargaining unit.

"Complainant" means an employee or an authorized representative of employees who believes that s/he has been discharged, disciplined, or discriminated against in violation of Section 11b(a) of the Act, and has filed an application with the Director of the Illinois Department of Labor.

"Day" means a calendar day.

"Department" means the Illinois Department of Labor.

"Director" means the Director of the Department or a duly authorized representative.

"Employee" means a laborer, worker, and/or mechanic covered by the Act.

"Party" means a Complainant or a Respondent.

"Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any group of persons.

"Respondent" means any person who has allegedly violated Section 11b(a) of the Act.

SUBPART B: OBLIGATIONS AND PROHIBITED CONDUCT

Section 353.200 Obligations and Prohibited Conduct

No person shall discharge, discipline, or in any other way discriminate against, or cause to be discharged, disciplined, or discriminated against, any employee or any authorized representative of employees by reason of the fact that the employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of this Act, or offers any evidence of any violation of this Act. (Section

## DEPARTMENT OF LABOR

## NOTICE OF ADOPTED RULES

- b) If the Director finds that a violation did not occur, s/he shall issue a decision denying the application. The decision shall advise the Complainant that the findings of fact shall become the final order of the Director denying the application unless, within 15 days of its receipt, the Complainant files a request for a hearing on the application with the Director at the Department's Chicago office.
- c) If the Director finds that a violation has occurred, s/he shall issue a decision incorporating his/her findings and requiring the Respondent to take such affirmative action to remedy the conduct as the Director deems appropriate. The decision shall advise the Respondent that the findings of fact shall become the final order of the Director unless, within 15 days after its receipt, the Respondent files a request for a hearing on the application with the Director at the Department's Chicago office.
- d) The Director may, in his/her discretion, make a determination of no finding. The parties and the Director shall be in joint agreement that such finding is appropriate to the investigation and may be made to promote the effective resolution of the review requested.
- e) Filing requirements shall be construed to mean the Director's receipt of the request. The party requesting a hearing shall file by telephone facsimile, telegram, hand delivery, or next-day delivery service. Proof that the filing was dispatched by the prescribed date shall be prima facie proof that the filing was timely received.

## Section 353.330 Request for Hearing

The request shall be prominently marked "REQUEST FOR HEARING" on both the letter and the envelope. The request must set forth the reasons why the party believes the Director misconstrued the evidence or misapplied the law to the facts, and any newly discovered evidence which the party could not have discovered during the Director's investigation. The party requesting a hearing shall serve copies of the request on the opposing party on the same day and in the same manner that the party files the request for the hearing with the Director.

## Section 353.340 Hearings

Upon receipt of a properly filed "request for hearing", the Director shall convene an administrative hearing pursuant to the provisions of the Illinois Administrative Procedure Act [5 ILCS 100] and 68 Ill. Adm. Code 680.230.

## Section 353.350 Judicial Review

A final order issued by the Director under Section 11b of the Act and this Part is subject to judicial review under the Administrative Review Law [735 ILCS 5/Art. 3].

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- |    |   |                                  |
|----|---|----------------------------------|
| 1) | <u>Heading of the Part:</u>                                   | Livestock Waste Regulations      |
| 2) | <u>Code Citation:</u>   | 35 Ill. Adm. Code 506            |
| 3) | <u>Section Number:</u>  | <u>Adopted Action:</u>           |
|    | 506.101   | New                              |
|    | 506.102   | New                              |
|    | 506.103   | New                              |
|    | 506.104   | New                              |
|    | 506.105   | New                              |
|    | 506.106   | New                              |
|    | 506.201   | New                              |
|    | 506.202   | New                              |
|    | 506.203   | New                              |
|    | 506.204   | New                              |
|    | 506.205   | New                              |
|    | 506.206   | New                              |
|    | 506.207   | New                              |
|    | 506.208   | New                              |
|    | 506.209   | New                              |
|    | 506.301   | New                              |
|    | 506.302   | New                              |
|    | 506.303   | New                              |
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|    | 506.311   | New                              |
|    | 506.312   | New                              |
|    | 506.313   | New                              |
|    | 506.314   | New                              |
|    | 506.401   | New                              |
|    | 506.501   | New                              |
|    | 506.601   | New                              |
|    | 506.602   | New                              |
|    | 506.603   | New                              |
|    | 506.701   | New                              |
|    | 506.702   | New                              |
|    | 506.703   | New                              |
|    | 506.704   | New                              |
| 4) | <u>Statutory Authority:</u>                                   | 415 ILCS 5/27 and 510 ILCS 77/55 |
| 5) | <u>Effective Date of Rule(s):</u>                             | May 20, 1997                     |
| 6) | <u>Does this rulemaking contain an automatic repeal date?</u> | No                               |



POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

- 7) Does this rule contain incorporation by reference? Yes
- 8) Date Filed in Agency's Principal Office: November 21, 1996
- 9) Notice(s) of Proposal Published in Illinois Register: 20 Ill. Reg. 15906, December 20, 1996
- 10) Has JCAR issued a Statement of Objections to this (these) Rule(s)? No.  
The Joint Committee did not issue a Certification of No Objection or a Statement of Objections. The Board is submitting these rules for adoption after expiration of the 45-day Second Notice period.
- 11) Difference(s) between proposal and final version: Due to the amount of substantive changes made, the Board has not detailed all the minor typographical and editorial changes.  
"506.105 Recordkeeping" was added to the Table of Contents.  
"506.106 Alternatives, Modifications and Waivers" was added to the Table of Contents.  
"506.307 Optimum Crop Yields" was changed to "506.307 Targeted Crop Yield Goal" in the Table of Contents.  
"506.308 Crop Nitrogen Requirements" was deleted from the Table of Contents.  
"506.402 Procedures" was deleted from the Table of Contents.  
"506.502 Cease and Desist Order Procedures", "506.503 Lagoon Registration and Certification Violations", "506.504 Certified Livestock Manager Violations", and "506.505 Waste Management Plan Violations" were deleted from the Table of Contents.  
"506.703 Penalties" was changed to "506.703 Initial Determination of Setbacks" in the Table of Contents.  
"506.704 Penalties" was added to the Table of Contents.  
In the Authority Note, "[P.A. 89-456, effective May 21, 1996, 510 ILCS 77]" was amended to read "(see P.A. 89-456, effective May 21, 1996 [510 ILCS 77/1])".  
In Section 506.101, "Plans" was changed to "Plan".  
Between Section 506.101 and 506.102, the following Board note was added:  
"BOARD NOTE: Upon the effective date of this Part, the emergency rules at 35 Ill. Adm. Code 505, Livestock Waste Regulations, will no longer apply. This Part will take the place of those emergency rules."  
In Section 506.103, the following definition was added: "LICENSED PROFESSIONAL GEOLOGIST" MEANS AN INDIVIDUAL WHO IS LICENSED UNDER THE LAWS OF THE STATE OF ILLINOIS TO ENGAGE IN THE PRACTICE OF PROFESSIONAL GEOLOGY IN ILLINOIS. [225 ILCS 745/15]."  
In Section 506.103 in the definition of "LIVESTOCK MANAGEMENT FACILITY", "A LIVESTOCK MANAGEMENT FACILITY" was changed to "LIVESTOCK MANAGEMENT Facilities".  
In Section 506.103 in the definition of "LIVESTOCK MANAGEMENT FACILITY", "facilities" was inserted between "operations," and "where".  
In Section 506.103, the definition of "Livestock pasture operation" was

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

- deleted.  
In Section 506.103 in the definition of "NEW FACILITY", "May 21, 1996 (" was inserted after "after".  
In Section 506.103 in the definition of "NEW FACILITY", ") was inserted after "Act".  
In Section 506.103 the following definition was added: "Occupied residence" means a house or other type of shelter that is intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, "intended or used for human occupancy" means running water and sanitation are provided within the residence."  
In Section 506.103, the definition of "populated area" was amended to read: "POPULATED AREA" MEANS ANY AREA WHERE AT LEAST 10 INHABITED NON-FARM RESIDENCES ARE LOCATED OR WHERE AT LEAST 50 PERSONS FREQUENT A COMMON PLACE OF ASSEMBLY OR A NON-FARM BUSINESS AT LEAST ONCE PER WEEK. [510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area. For the purpose of setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers. A common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year, provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur."  
In Section 506.104(a)(2), changed the comma after "(616) 429-5585" to a colon and started a new indent level at "Design".  
In Section 506.104(a)(2), added a new indent line after "pp. 498-500." and added "Designs of Anaerobic Lagoons for Animal Waste Management", ASAE Standards 1993, ASAE EP403.2, 1993, pp. 543-546."  
In Section 506.104(a)(4), added ", June 1992" after "5".  
Between Section 506.104 and 506.201, added the following two new Sections:  
"Section 506.105 Recordkeeping  
a) The Department shall maintain a file for all facilities registering or otherwise filing documents with the Department under these regulations.  
b) The file shall contain all registration materials, along with all supporting data and justifications, records of Department certification and determinations, groundwater monitoring results (if required), waste management plans (if required), and any other

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

information submitted to the Department by the owner or operator of a facility.

- c) Copies of materials in the file for a registered facility shall be available for public inspection.

## Section 506.106 Alternatives, Modifications and Waivers

- a) All requests for alternatives, modifications, and waivers to these regulations, where allowed by Sections 15(a) and (e) of the Act [510 ILCS 77/15(a), (e)] or this Part (Sections 506.202(d), 506.204(h), 506.205(f), 506.206(j), 506.209(a)(2)) shall be made in writing to the Department. Construction may not begin or continue until the request for alternative, modification, or waiver is granted.
- b) Each request for an alternative, modification, or waiver shall contain a certification from a Licensed Professional Engineer or Licensed Professional Geologist, as relevant, that the grant of the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements.

- c) The Department shall notify the applicant in writing of its determination within 30 days after receipt of the request for an alternative, modification, or waiver. To grant the requested alternative, modification, or waiver, the Department must determine that the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements."

In Section 506.201(c), added "and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997," after "1996".

In Section 506.202(b)(3), added "to ensure that no gaps occur in the sample column" after "boring".

In Section 506.202 after "77 Ill. Adm. Code 920.120", added "(c) If the Department determines that additional soil borings are necessary to ensure the protection of the groundwater, surface water and the structural integrity of the livestock waste management facility, the Department shall require additional soil borings."

In Section 506.202, changed the outline letters "c" and "d" to "d" and "e", respectively.

In Section 506.202(d), added "or (c)" after "subsection (b)".

In Section 506.202(e), changed "(b) or (c)" to "(b), (c) or (d)", respectively.

In Section 506.202(e), changed "Registered Professional Geologist" to "Licensed Professional Geologist".

In Section 506.202(e), added "Such certification shall include all supporting data and justification." after "part."

In Section 506.203(b)(4)(A), changed "THE NEAREST" to "the nearest".

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

In Section 506.203(b)(4)(B), changed "nearest" to "closest".

In Section 506.203(b)(4)(B), changed "THE" to "the".

In Section 506.203(b)(4)(E), deleted "associated".

In Section 506.203(b)(7), changed "Registered Professional Geologist" to "Licensed Professional Geologist".

In Section 506.203, added subsection e) to read: "e) CONSTRUCTION SHALL NOT BEGIN UNTIL 30 DAYS AFTER SUBMITTAL OF A REGISTRATION FORM BY CERTIFIED MAIL TO THE DEPARTMENT. [510 ILCS 77/15(b)]."

In Section 506.204(a)(1), added ", as updated by ASAE Engineering Practice 403.2" after "403.1".

In Section 506.204(c), added "a" after "conduct".

In Section 506.204(d)(1), changed "upper most" to "uppermost".

In Section 506.204, added "Berm: A)" after "1)".

In Section 506.204, added "B) The berm may contain no outlet piping that extends through the berm unless the piping discharges to another lagoon;" after "feet;" .

In Section 506.204, added "Berm slope: A)" after "2)".

In Section 506.204, deleted "Interior and".

In Section 506.204, changed "exterior" to "Exterior".

In Section 506.204, added "and normally exposed interior (above the liquid level elevation corresponding to the summation of the sludge volumes and minimum design volume)" after "Exterior".

In Section 506.204, added "B) Interior berm earthen walls below the liquid level elevation corresponding to the summation of the sludge volumes and

minimum design volume shall have side slopes not steeper than a 3 to 1 ratio of horizontal to vertical; or a 2 to 1 ratio of horizontal to vertical if designed by a Licensed Professional Engineer and maintained to eliminate berm deterioration;" after "deterioration".

In Section 506.204(g)(3)(A), changed "4.4.1.1" to "5.4.1.1".

In Section 506.204(g)(3)(A), changed "1992" to "1993".

In Section 506.204(g)(3)(A), changed "p. 498, 499" to "pp. 543-545".

In Section 506.204(g)(3)(B), changed "from Table 1, ASAE EP403.1 ASAE Standards 1992, p. 498" to "in accordance with ASAE EP403.2, ASAE Standards 1993, p. 543".

In Section 506.204(g)(3)(D), changed "4.4.1.4, ASAE EP 403.1, ASAE Standards 1992, p. 499" to "5.4.1.4, ASAE EP403.2, ASAE Standards 1993, p. 545".

In Section 506.204(g)(4), changed "the lagoon does not collect" to "not collecting".

In Section 506.204(g)(6), changed "Illinois Groundwater Protection Act [415 ILCS 55]" to "Illinois Environmental Protection Act [415 ILCS 5]".

In Section 506.204(g)(8), changed "volume" to "depth".

In Section 506.204(h), changed "deviate from" to "MODIFY OR EXCEED".

In Section 506.204(h), changed "deviation" to "modification".

In Section 506.205(f), changed "deviated from" to "MODIFY OR EXCEED".

In Section 506.205(f), changed "deviation" to "modification".

In Section 506.206(e), changed "Monitoring wells shall be sampled" to "The owner or operator shall sample each monitoring well at least".



POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

operational cease and desist order may be issued by the Department. Any necessary changes shall be made to the lagoon by the lagoon owner or operator to comply with the Livestock Management Facilities Act and this Part. The operational cease and desist order shall be canceled by the Department after the Department determines compliance with the Livestock Management Facilities Act and this Part."

In Section 506.209, deleted "Closure:".

In Section 506.209(a)(1), changed "[510 ILCS 77]" to "[510 ILCS 77/15(e)]".

In Section 506.209(a)(1)(A), deleted "to the Department".

In Section 506.209(b), deleted "Ownership Transfer:".

In Section 506.209(b), inserted "waste" after "livestock".

In Section 506.301, changed "requirement of the crop to be grown during that growing season" to "DEMAND OF THE CROPS TO BE GROWN WHEN AVERAGED OVER A 5-YEAR PERIOD [510 ILCS 77/20(f)(4)]".

In Section 506.302, changed "[510 ILCS 77]" to "[510 ILCS 77/20]".

In Section 506.302, inserted a comma after "prepare".

In Section 506.302(c)(4), changed "THE" to "the".

In Section 506.302(c)(4), changed "SUBSECTION (c)" to "SUBSECTION (c)".

In Section 506.302(c)(4), changed "six" to "6".

In Section 506.302(d), changed "The owner or operator of a livestock management facility with 7,000 or greater animal units shall prepare, maintain, implement, and submit to the Department the waste management plan for approval" to "THE LIVESTOCK MANAGEMENT FACILITY OWNER OR OPERATOR AT A FACILITY OF 7,000 OR GREATER ANIMAL UNITS SHALL PREPARE, MAINTAIN, implement, AND SUBMIT TO THE DEPARTMENT THE WASTE MANAGEMENT PLAN FOR APPROVAL [510 ILCS 77/20(d)]".

In Section 506.302(e), changed "optimum crop yields" to "targeted crop yield goals".

In Section 506.302(f), inserted "and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31 1997" after "1996".

In Section 506.303(f), inserted "non-farm businesses, common places of assembly," after "residences."

In Section 506.303(i), inserted "anticipated crops for" after "year,".

In Section 506.303(i), inserted "anticipated crops for" after "and."

In Section 506.303(j), changed "Optimum crop yields" to "Targeted crop yield goal".

In Section 506.303(j), deleted ", verified by yield history, if available".

In Section 506.303(k), changed "Nutrient" to "Estimated nutrient".

In Section 506.303(m)(5), changed "optimum crop yields" to "targeted crop yield goal".

In Section 506.303(r), changed ", however livestock waste may be applied through irrigation systems onto grassed waterways" to ". For the purposes of this Part, a grassed area serving as a waterway may receive livestock waste through an irrigation system".

In Section 506.303(r), deleted the comma after "150 feet" and added "; the

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

In Section 506.206(e), inserted "at least" before "quarterly".

In Section 506.206(e), inserted "(a)(1) and (3)" after "506.104".

In Section 506.206, changed "Escherichia coli" to "Escherichia coli".

In Section 506.206, changed "Fecal Streptococcus" to "Fecal Streptococcus".

In Section 506.206, inserted "f)" before "Department".

In Section 506.206, changed "f)" to "g)".

In Section 506.206, changed "g)" to "h)".

In Section 506.206, changed "subsection (f)" to "subsection (g)".

In Section 506.206, inserted "i)" before "Failure".

In Section 506.206(i), changed "subsection (f)" to "subsection (g)".

In Section 506.206(i), inserted "and shall subject the owner or operator to penalties set forth in this Part and the Livestock Management Facilities Act [510 ILCS 77]" after "Part".

In Section 506.206, changed "h)" to "j)".

In Section 506.206, changed "deviate from" to "MODIFY OR EXCEED".

In Section 506.206, changed "deviation" to "modification".

In Section 506.207(a), changed "OR" to "or".

In Section 506.207(b), inserted "shall" after "and".

In Section 506.207(c), changed "SUBSECTION (a)" to "SUBSECTION (a)".

In Section 506.208, inserted "a)" before "The".

In Section 506.208(a), changed "SUBSECTION (a)" to "SUBSECTION (a)".

In Section 506.208(a), inserted "AND CERTIFY THE LAGOON" after "register".

In Section 506.208(a), changed "of" to "after".

In Section 506.208(a), changed "subsections (a) and (b)" to "subsections (a) and (b)".

In Section 506.208(a), inserted "of Section 15" after "(b)".

In Section 506.208(a), changed "[510 ILCS 77]" to "[510 ILCS 77/15]".

In Section 506.208(a), inserted "Section 15 of" after "of".

In Section 506.208(a), changed "[510 ILCS 77]" to "[510 ILCS 77/15]".

In Section 506.208, added the following language:

b) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations occurring during lagoon construction, a cease and desist order to stop construction may be issued by the Department. Changes shall be made to the lagoon by the owner or operator to ensure construction according to the provisions of the Livestock Management Facilities Act [510 ILCS 77] and this Part. The cease and desist order shall be canceled by the Department upon submission of the registration materials by the lagoon owner or operator to the Department, and after the Department's review of the construction plans and specifications and lagoon registration materials, and after determination of compliance with the Livestock Management Facilities Act and this Part by the Department.

c) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations which occur after completion of lagoon construction, an



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

distance from applied livestock waste to a non-portable well, an abandoned or plugged well, a drainage well, or an injection well is greater than 100 feet;"

In Section 506.303(u), the language was changed to read: "A provision that livestock waste may not be applied during a rainfall or to saturated soil and that conservative waste loading rates will be used in the case of a high water table or shallow earth cover to fractured bedrock. Caution should be exercised in applying livestock wastes, particularly on porous soils, so as not to cause nitrate or bacteria contamination of groundwaters."

In Section 506.305(b), deleted "and analyzed within 60 working days prior to application of the waste" and added "during the application process. Multiple subsamples shall be obtained and may be combined into one sample for analysis so that a representative sample is used for preparation of the waste management plan. A sample taken during waste application the previous year can be used as a representative sample of the waste to be applied the following year unless there has been a change in the waste management practices".

In Section 506.305(d), changed "total potassium, copper, and zinc" to "and total potassium".

In Section 506.306, deleted "The Department may adopt criteria which set forth the adjustments to nitrogen availability."

In Section 506.307, changed "Section 506.307 Optimum Crop Yields" to "Section 506.307 Targeted Crop Yield Goal".

In Section 506.307(a), changed "optimum crop yield" to "targeted crop yield goal" twice.

In Section 506.307(a), changed "five year" to "five-year".

In Section 506.307(a), deleted "prioritized".

In Section 506.307(a), changed "average yield" to "the targeted crop yield goal" and deleted "The sources shall be utilized according to the prioritized order."

In Section 506.307(a)(1), added "The proven yield shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied" after "Proven yields."

In Section 506.307(a)(1), changed the colon after "discarded" to a period. In Section 506.307(a)(1), added "proven yields shall be used unless there is a sound agronomic basis for predicting a different targeted crop yield goal:" after "discarded."

In Section 506.307(a)(2), added "insurance" after "crop".

In Section 506.307(b), "an optimum crop yield" was changed to "a targeted crop yield goal".

In Section 506.307(b), "optimum crop yield" was changed to "targeted crop yield goal".

Section 506.308 was deleted.

Section 506.309(c) was deleted.

In Section 506.311(a)(1), "optimum yields" was changed to "targeted crop yield goals".

In Section 506.312(a), (b), and (c); changed "optimum yield" to "targeted

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

yields".

In Section 506.313(a), inserted "next" before "application".

In Section 506.313(a), deleted "period" after "application".

In Section 506.313(a), deleted "The nitrogen content results from the most recent analysis shall be used when updating the plan."

In Section 506.314, added "a" before "ANY".

In Section 506.314, the following language was added:

b) The operational cease and desist order procedures may be suspended by the Department upon submittal of a waste management plan by the owner or operator to the Department. The cease and desist order shall be canceled by the Department upon approval of the waste management plan by the Department.

c) A waste management plan prepared as a result of a warning letter or compliance agreement shall be subject to approval by the Department.

d) Penalties shall not be imposed for excessive nitrogen application for unplanned cropping changes due to weather or other unforeseeable circumstances."

In Section 506.401(c), inserted "and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997," after "1996".

In Section 506.410, the following language was added:

e) For violations pertaining to the certified livestock manager requirements, the owner or operator SHALL BE ISSUED A WARNING LETTER FOR THE FIRST VIOLATION AND SHALL BE REQUIRED TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN 30 WORKING DAYS. FOR FAILURE TO COMPLY WITH THE WARNING LETTER WITHIN THE 30 DAY PERIOD, THE PERSON SHALL BE FINED AN ADMINISTRATIVE PENALTY OF UP TO \$500 BY THE DEPARTMENT AND SHALL BE REQUIRED TO ENTER INTO AN AGREEMENT TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN 30 WORKING DAYS.

FOR FAILURE TO COMPLY WITH THE AGREEMENT TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN THE 30 DAY PERIOD OR FOR FAILURE TO ENTER INTO A COMPLIANCE AGREEMENT, THE PERSON SHALL BE FINED UP TO \$1,000 BY THE DEPARTMENT AND SHALL BE REQUIRED TO ENTER INTO AN AGREEMENT TO HAVE A CERTIFIED MANAGER FOR THE LIVESTOCK WASTE HANDLING FACILITY WITHIN 30 WORKING DAYS. FOR CONTINUED FAILURE TO COMPLY, THE DEPARTMENT MAY ISSUE AN OPERATIONAL CEASE AND DESIST ORDER UNTIL COMPLIANCE IS ATTAINED. [510 ILCS 77/30(g)] The cease and desist order shall be canceled by the Department upon presentation to the Department of a valid certified livestock manager certificate issued in the name of the owner, operator, or current employee of the livestock facility."

Section 506.502 was deleted.

Section 506.503 was deleted.

Section 506.504 was deleted.

Section 506.505 was deleted.

In Section 506.601, inserted "Section 17 of" after "OUTLINED IN". In Section 506.603, deleted "a)".

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

non-farm business is not an outdoor activity and is an indoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or the livestock management facility to the nearest corner of the structure where the indoor activity takes place.

- 3) A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE HANDLING FACILITY SERVING LESS THAN 5 ANIMAL UNITS SHALL BE EXEMPT FROM SETBACK DISTANCES AS SET FORTH IN THE Livestock Management Facilities ACT BUT SHALL BE SUBJECT TO RULES PROMULGATED UNDER THE ILLINOIS ENVIRONMENTAL PROTECTION ACT.
- 4) FOR A LIVESTOCK MANAGEMENT FACILITY OR WASTE HANDLING FACILITY SERVING 50 OR GREATER BUT LESS THAN 1,000 ANIMAL UNITS, THE MINIMUM SETBACK SHALL BE 1/4 MILE FROM THE NEAREST OCCUPIED NON-FARM RESIDENCE AND 1/2 MILE FROM THE NEAREST POPULATED AREA.
- 5) FOR A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE HANDLING FACILITY SERVING 1,000 OR GREATER BUT LESS THAN 7,000 ANIMAL UNITS, THE SETBACK IS AS FOLLOWS:
  - A) FOR A POPULATED AREA, THE MINIMUM SETBACK SHALL BE INCREASED 440 FEET OVER THE MINIMUM SETBACK OF 1/2 MILE FOR EACH ADDITIONAL 1,000 ANIMAL UNITS OVER 1,000 ANIMAL UNITS.
  - B) FOR ANY OCCUPIED RESIDENCE, THE MINIMUM SETBACK SHALL BE INCREASED 220 FEET OVER THE MINIMUM SETBACK OF 1/4 MILE FOR EACH ADDITIONAL 1,000 ANIMAL UNITS OVER 1,000 ANIMAL UNITS.
- 6) FOR A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE HANDLING FACILITY SERVING 7,000 OR GREATER ANIMAL UNITS, THE SETBACK IS AS FOLLOWS:
  - A) FOR A POPULATED AREA, THE MINIMUM SETBACK SHALL BE 1 MILE.
  - B) FOR ANY OCCUPIED RESIDENCE, THE MINIMUM SETBACK SHALL BE 1/2 MILE.
- d) REQUIREMENTS GOVERNING THE LOCATION OF A NEW LIVESTOCK MANAGEMENT FACILITY AND NEW LIVESTOCK WASTE-HANDLING FACILITY AND CONDITIONS FOR EXEMPTIONS OR COMPLIANCE WITH THE MAXIMUM FEASIBLE LOCATION AS PROVIDED IN 35 Ill. Adm. Code 501.402 CONCERNING AGRICULTURE RELATED POLLUTION SHALL APPLY TO THOSE FACILITIES IDENTIFIED IN SUBSECTIONS (b) AND (c) OF THIS SECTION. WITH REGARD TO THE MAXIMUM FEASIBLE LOCATION REQUIREMENTS, ANY REFERENCE TO A SETBACK DISTANCE IN 35 Ill. Adm. Code 501.402 SHALL MEAN THE APPROPRIATE DISTANCE AS SET FORTH IN THIS SECTION. [510 ILCS 77/35(d)]
- e) SETBACK CATEGORY SHALL BE DETERMINED BY THE DESIGN CAPACITY IN ANIMAL UNITS OF THE LIVESTOCK MANAGEMENT FACILITY. [510 ILCS 77/35(e)]
- f) SETBACKS MAY BE DECREASED WHEN INNOVATIVE DESIGNS AS APPROVED BY THE DEPARTMENT ARE INCORPORATED INTO THE FACILITY. [510 ILCS 77/35(f)]
- 1) An owner or operator shall request a setback decrease in

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

In Section 506.603, deleted "b) Unless otherwise provided for by Board regulations, the Department may adopt and promulgate all procedures and criteria reasonably necessary to perform its duties and responsibilities under this Subpart."

In Section 506.701, inserted "a)" before "All".  
In Section 506.701(a), changed "[510 ILCS 77]" to "[510 ILCS 77/35]".  
In Section 506.701, the following language was added:

"b) Commencement of operations at a facility reconstructed within two years after partial or total destruction due to natural causes such as tornado, fire, flood, or earthquake, shall not be considered the location of a new livestock management or waste handling facility for setback purposes. Likewise, a residence partially or totally destroyed due to natural causes, such as tornado, fire, flood, or earthquake, shall retain its original setback for a period of no greater than two years, to allow for reconstruction of the residence."

Section 506.702 was amended to read:

- a) GRANDFATHER PROVISION: FACILITIES IN EXISTENCE PRIOR TO JULY 15, 1991. LIVESTOCK MANAGEMENT FACILITIES AND LIVESTOCK WASTE HANDLING FACILITIES IN EXISTENCE PRIOR TO JULY 15, 1991 SHALL COMPLY WITH SETBACKS IN EXISTENCE PRIOR TO JULY 15, 1991, AS SET FORTH IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(a)]
- b) GRANDFATHER PROVISION: FACILITIES IN EXISTENCE ON EFFECTIVE DATE AND AFTER JULY 15, 1991. LIVESTOCK MANAGEMENT FACILITIES AND LIVESTOCK WASTE HANDLING FACILITIES IN EXISTENCE ON MAY 21, 1996 (THE EFFECTIVE DATE OF the Livestock Management Facilities ACT) BUT AFTER JULY 15, 1991 SHALL COMPLY WITH SETBACKS IN EXISTENCE PRIOR TO MAY 21, 1996, AS SET FORTH IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(b)]
- c) NEW LIVESTOCK MANAGEMENT OR LIVESTOCK WASTE HANDLING FACILITIES. ANY NEW FACILITY SHALL COMPLY WITH THE FOLLOWING SETBACKS: [510 ILCS 77/35(c)]
  - 1) Residence and Non-Farm Residence: FOR PURPOSES OF DETERMINING SETBACK DISTANCES, MINIMUM DISTANCES SHALL BE MEASURED FROM THE NEAREST CORNER OF THE RESIDENCE TO THE NEAREST CORNER OF THE EARTHEN WASTE LAGOON OR LIVESTOCK MANAGEMENT FACILITY, WHICHEVER IS CLOSER.
  - 2) Common Place of Assembly or Non-Farm Business: For the purposes of determining setback distances between a common place of assembly or non-farm business:
    - A) When the primary activity at a common place of assembly or non-farm business is an outdoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or livestock management facility to the nearest point on the legal property line of the common place of assembly or non-farm business.
    - B) When the primary activity at a common place of assembly or



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

writing prior to construction.

- 2) An owner or operator shall attach to the request for decrease a certification by a Licensed Professional Engineer that in the professional judgment of the Licensed Professional Engineer the innovative designs incorporated into the facility will provide more odor protection than the original setbacks.
- 3) The Department shall notify the owner or operator of its determination within 30 days after the receipt of the request for decrease. In approving a reduction in setbacks due to innovative designs, the Department shall specifically find that such use of an innovative design will provide more odor protection than the original setbacks.
- 4) Where the Department grants such a decrease from the setbacks, the Department must maintain a file which includes all supporting data and justification which it relied upon in making its determination. This file is subject to public inspection.
- g) A SETBACK MAY BE DECREASED WHEN WAIVERS ARE OBTAINED FROM OWNERS OF RESIDENCES THAT ARE OCCUPIED AND LOCATED IN THE SETBACK AREA. [510 ILCS 77/35(g)] A setback also may be decreased when waivers are obtained from owners of non-farm businesses or common places of assembly that are located in the setback area.
  - 1) An owner or operator request for a setback decrease shall be in writing and submitted to the Department prior to construction.
  - 2) An owner or operator shall attach to the request copies of the written and notarized waivers from all the owner(s) of the residence(s), non-farm business(es), and common place(s) of assembly that are located within the setback area.
  - 3) Within 30 days after receipt of the request and waivers, the Department shall notify the owner or operator in writing of the setback decrease.
  - 4) When such a decrease from the setbacks is requested, the Department must maintain a file which includes all supporting data and justification concerning the setback decrease. This file is subject to public inspection."

Section 506.703 was amended to read:

"Section 506.703 Initial Determination of Setbacks

The requirements of this Section do not apply to new livestock management facilities or new livestock waste handling facilities serving less than 50 animal units.

- a) An owner or operator shall file a notice of intent to construct which meets the informational requirements of subsection (b) of this Section for a new livestock management facility or new livestock waste handling facility with the Department prior to construction to establish an initial determination of setbacks.
- b) The notice of intent to construct shall contain a legal description of the land on which the livestock facility will be

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

constructed; the name(s) and addresses of the owner(s) or operator(s) of the facility; the type and size of the facility and number of animal units; the names and addresses of the owner(s), including local, State and federal governments, of the property located within the setback area; the distance to the nearest populated area, residence, non-farm business, and common place of assembly; a map or sketch showing the proposed facility and setbacks; and a statement identifying whether a request for decrease in setbacks, pursuant to Section 506.702(f) or (g), has been sought and whether the request has been granted or denied yet.

- c) The owner or operator shall mail by certified mail the notice of intent to construct to the owner(s) of the property located within the setback distances. The owner(s) of the property located within the setback distances are presumed, unless established to the contrary, to be the person shown by the current collector's warrant book to be the party in whose name the taxes were last assessed.
- d) Within 30 days after receipt of the notice to construct, the Department shall notify the owner or operator in writing whether the setback distances have been met.
- e) The date the notice of intent to construct is filed with the Department establishes the base date for the determination of whether residences, non-farm businesses, or common places of assembly exist for setback purposes and shall remain the base date if construction begins within one year following receipt of the Department's determination or if a lagoon registration form is filed with the Department within one year after receipt of the Department's determination of compliance with the setback distances.
- f) If the Department determines that the owner or operator has complied with the setback requirements, later constructed or erected residences, non-farm businesses, or common places of assembly cannot operate to alter the setback as initially determined, subject to the limitation in subsection (e) of this Section.
- g) Where an intent to construct has been filed, the Department must maintain a file which includes all filings and supporting data and justification which it relied upon in making its determination regarding compliance with the setback distances. This file is subject to public inspection."

Section 506.704 was added to read:

"Section 506.704 Penalties

- a) For violations of the setback distance requirements, the Department may issue one of the following to the owner or operator of the livestock management facility or livestock waste handling facility:
  - 1) If during construction, a cease and desist order which



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

prohibits further construction of the livestock management facility or livestock waste handling facility, prohibits entry of livestock into the livestock management facility, and prohibits use of the livestock waste handling facility; or

- 2) An operational cease and desist order.
- b) A cease and desist order issued by the Department pursuant to subsection (a) of this Section shall be canceled by the Department pursuant to the following:

- 1) Submission to the Department of a valid waiver as provided for in Section 506.702(g) of this Subpart by the livestock management facility owner or operator or the livestock waste handling facility owner or operator; or
- 2) Verification by the Department of compliance with the appropriate setback distances as described in Section 35 of the Livestock Management Facilities Act [510 ILCS 77/35]."

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

- 13) Will this rule replace an emergency rule currently in effect? Yes. This rule will replace the emergency rule adopted in R97-14 and published at 21 Ill. Reg. 4313, effective March 31, 1997.

- 14) Are there any amendments pending on this Part? No

- 15) Summary and Purpose of Rule(s): For more specific information regarding this rule please see the Board's March 20, 1997, and May 15, 1997 final opinion and orders which are available from the address listed in Item No. 16 below. The Livestock Management Facilities Act (LMFAct) [510 ILCS 77/1], adopted as P.A. 89-456, eff. May 21, 1996, set forth an outline for the proper design, construction, operation, and management of livestock management facilities and associated waste handling structures. It further provided for education and certification of livestock managers, research, proper disposal of livestock waste, and financial responsibility of closure of lagoons. While many provisions of the LMFAct required no further regulatory implementation, the legislature recognized that some of the provisions would need regulatory implementation. As a result, the legislature directed the Department of Agriculture to propose rules to the Board within six months after the effective date of the LMFAct. The Department of Agriculture filed proposed rules with the Board on November 21, 1997. Pursuant to the LMFAct, the Board is required to adopt rules for the implementation of the LMFAct within six months after the Department filed the proposed rules with the Board. The intent of the rules are to "maintain an economically viable livestock industry in the State of Illinois while protecting the environment for the benefit of both the livestock producer and persons who live in the vicinity of a livestock production facility." [510 ILCS 77/5(b)] The rules set forth administrative requirements such as standards and procedures that the

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

Department of Agriculture must follow in making various administrative determinations under these rules. The rules also contain a Section that mandates that records be kept of all determinations and that such records be subject to public inspection. Regarding setbacks, the regulations require that new livestock management and livestock waste handling facilities provide notification to the Department of Agriculture of their intent to build prior to construction. Further, the Board rules provide a process that is designed to ensure that all statutory setback distances are adhered to and that notice is given to all owners of property located within the setback areas. For measuring setbacks from common places of assembly where the primary activity of the place is outdoors, the rules provide that the setbacks be measured from the nearest corner of the property line of the common place of assembly. The Department of Agriculture is also required to certify that the applicable setback distances have been complied with before construction begins. Where the LMFAct allows for the Department of Agriculture to provide for a decrease of the statutory setbacks if innovative designs are incorporated into the facility, the Board rules require that the owner or operator attach to the request for decrease a certification by a Licensed Professional Engineer that the innovative designs incorporated into the facility will achieve a greater amount of odor protection than the waived setbacks. The rules also substantially mirror the provisions of the LMFAct and provide that setbacks may be decreased when waivers are obtained from owners of occupied residences, non-farm businesses, and common places of assembly that are located within the setback area. The request for a setback decrease must be in writing, and the owner or operator seeking the decrease must attach to the request, copies of the written and notarized waivers from the owner(s) of the property located within the setback area. The rules further provide that the Department of Agriculture must notify the owner or operator in writing of the setback decrease within 30 days after receipt of the request for decrease. Regarding design of lagoons, these rules require specific design standards for livestock waste lagoons, which are in accord with established engineering practices. Specifically, the rules require that the owner or operator of a new or modified lagoon register that lagoon with the Department of Agriculture and hire a Licensed Professional Engineer or Licensed Professional Geologist to perform a site investigation prior to construction. The site investigation requires soil borings to determine the distance of the lagoon bottom to any aquifer material. Depending on the proximity of such material, liners and/or groundwater monitoring will be required. Construction can only begin after proper licensed professional certification is made to the Department of Agriculture. The regulations also allow the Department of Agriculture to require changes in design that might be necessary to protect the groundwater. Moreover, the rules direct the Department of Agriculture, as a condition of the issuance of a livestock waste lagoon registration, to conduct periodic site inspections to assess the degree of compliance with the requirements of the LMFAct. Regarding the management of livestock management facilities, the rules

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

provide that waste management plans be prepared by certain facilities that meet the statutory threshold animal unit requirement and further set forth provisions concerning application of livestock waste to the land. Moreover, the rules establish that a livestock waste handling facility that serves a certain number of animal units be managed by a certified livestock manager. Regarding penalties, the rules provide that the Department of Agriculture may issue cease and desist orders, and otherwise order necessary penalties, for the violation of any of these rules. Regarding financial assurance and requirements for closure, the rules recite the statutory language. Moreover, the Board has opened a Docket B to accept proposal from interested parties on the procedures and criteria necessary to determine the level of surety required. Finally, where the LMFAct allows the Department of Agriculture to grant an alternative, modification, or waiver of these rules, the Board rules set forth a specific process to ensure that any such alternatives, modifications, or waivers are environmentally protective.

- 16) Information and questions regarding this adopted rule shall be directed to: Question regarding these adopted rules may be addressed to:

Cynthia Ervin  
Attorney Assistant  
Illinois Pollution Control Board  
600 South Second Street, Suite 402  
Springfield, IL 62704  
(217) 524-8509

Requests for copies of the adopted rules may be addressed to:

Dorothy Gunn,  
Clerk of the Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
(312) 814-6931

The full text of the adopted rule(s) begins on the following page:

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE E: AGRICULTURE RELATED POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

PART 506  
LIVESTOCK WASTE REGULATIONS

## SUBPART A: GENERAL PROVISIONS

Section	
506.101	Applicability
506.102	Severability
506.103	Definitions
506.104	Incorporations by Reference
506.105	Recordkeeping
506.106	Alternatives, Modifications and Waivers

## SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

Section	
506.201	Applicability
506.202	Site Investigation
506.203	Registration
506.204	Lagoon Design Standards
506.205	Liner Standards
506.206	Groundwater Monitoring
506.207	Certification of Construction
506.208	Failure to Register or Construct in Accordance with Standards
506.209	Lagoon Closure and Ownership Transfer

## SUBPART C: WASTE MANAGEMENT PLAN

Section	
506.301	Purpose
506.302	Scope and Applicability
506.303	Waste Management Plan Contents
506.304	Livestock Waste Volumes
506.305	Nutrient Content of Livestock Waste
506.306	Adjustments to Nitrogen Availability
506.307	Targeted Crop Yield Goal
506.309	Nitrogen Credits
506.310	Records of Waste Disposal
506.311	Approval of Waste Management Plans
506.312	Sludge Removal
506.313	Plan Updates
506.314	Penalties

## SUBPART D: CERTIFIED LIVESTOCK MANAGER

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

BOARD NOTE: Upon the effective date of this Part, the emergency rules at 35 Ill. Adm. Code 505, Livestock Waste Regulations, will no longer apply. This part will take the place of those emergency rules.

Section 506.102 Severability

If any provision of this Part or its application to any person or under any other circumstances is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 506.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5] or the Livestock Management Facilities Act [510 ILCS 77]. For the purposes of this Part, the terms included herein shall have their associated meaning as follows:

"Agency" means the Illinois Environmental Protection Agency. [510 ILCS 77/10.5]

"Animal feeding operation" means a feeding operation as defined in the Illinois Environmental Protection Act and the rules promulgated under that Act concerning agriculture related pollution. [510 ILCS 77/10.7]

"Animal unit" means a unit of measurement for any animal feeding operation calculated as follows:

Brood cows and slaughter and feeder cattle multiplied by 1.0.

Milking dairy cows multiplied by 1.4

Young dairy stock multiplied by 0.6.

Swine weighing over 55 pounds multiplied by 0.4.

Swine weighing under 55 pounds multiplied by 0.03.

Sheep, lambs, or goats multiplied by 0.1.

Horses multiplied by 2.0.

Turkeys multiplied by 0.02.

Laying hens or broilers multiplied by 0.01 (if the facility has continuous overflow watering)

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

Section 506.401 Applicability

SUBPART E: PENALTIES

Section 506.501 General

SUBPART F: FINANCIAL RESPONSIBILITY

Section 506.601 Applicability  
506.602 Evidence of Financial Responsibility  
506.603 Level of Surety

SUBPART G: SETBACKS

Section 506.701 Applicability  
506.702 Procedures  
506.703 Initial Determination of Setbacks  
506.704 Penalties

AUTHORITY: Authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27] and Section 55 of the Livestock Management Facilities Act and implementing the Livestock Management Facilities Act (see P.A. 89-456, effective May 21, 1996 [510 ILCS 77/1]).

SOURCE: Adopted in R97-15 at 21 Ill. Reg. 6861, effective May 21, 1997.

NOTE: In this Part, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets; and SUM means the summation series or sign function as used in mathematics.

SUBPART A: GENERAL PROVISIONS

Section 506.101 Applicability

This Subpart applies to 35 Ill. Adm. Code 506. The applicability of Subpart B, Standards for Livestock Waste Lagoons, is set forth at Section 506.201 of this Part. The applicability of Subpart C, Waste Management Plan, is set forth at Section 506.302 of this Part. The applicability of Subpart D, Certified Livestock Manager, is set forth at Section 506.401 of this Part. The applicability of Subpart F, Financial Responsibility, is set forth at Section 506.601 of this Part. The applicability of Subpart G, Setbacks, is set forth at Section 506.701 of this Part.



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

Laying hens or broilers multiplied by 0.03 (if the facility has a liquid manure handling system).

Ducks multiplied by 0.02. [510 ILCS 77/10.10]

"Aquifer material" means sandstone which is five feet or more in thickness, or fractured carbonate which is ten feet or more in thickness; or, sand, gravel, or sand and gravel, as defined herein, such that there is at least two feet or more present within any five foot section of a soil boring performed in accordance with Section 506.202 of this Part.

"Certified livestock manager" means a person that has been duly certified by the Department as an operator of a livestock waste handling facility. [510 ILCS 77/10.15]

"Department" means the Illinois Department of Agriculture. [510 ILCS 77/10.20]

"Farm residence" means any residence on a farm owned or occupied by the farm owners, operators, tenants, or seasonal or year-round hired workers. For purposes of this definition, a "farm" is the land, buildings, and machinery used in the commercial production of farm products, and "farm products" are those plants and animals and their products which are produced or raised for commercial purposes and include but are not limited to forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, trees, fish, honey and other similar products, or any other plant, animal, or plant or animal product which supplies people with food, feed, fiber, or fur. [510 ILCS 77/10.23]

"Gravel" or "Sand and gravel" means unconsolidated materials that contain a matrix (particles of two millimeters or less) that is consistent with the definition of "sand" and particles larger than two millimeters in size.

"Lagoon" or "Earthen livestock waste lagoon" means any excavated, diked, or walled structure or combination of structures designed for biological stabilization and storage of livestock wastes. A lagoon does not include structures such as manufactured slurry storage structures or pits under buildings as defined in rules under the Environmental Protection Act concerning agriculture related pollution. [510 ILCS 77/10.25]

"Licensed Professional Engineer" means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering. [415 ILCS 5/57.2]

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

"Licensed Professional Geologist" means an individual who is licensed under the laws of the State of Illinois to engage in the practice of professional geology in Illinois. [225 ILCS 745/15]

"Livestock management facility" means any animal feeding operation, livestock shelter, or on-farm milking and accompanying milk-handling area. Two or more livestock management facilities under common ownership, where the facilities are not separated by a minimum distance of 1/4 mile, and that share a common livestock waste handling facility shall be considered a single livestock management facility. Livestock management facilities at educational institutions, livestock pasture operations, facilities where animals are housed on a temporary basis such as county and state fairs, livestock shows, race tracks, and horse breeding and foaling farms, and market holding facilities are not subject to the Livestock Management Facilities Act or the requirements of this Part. [510 ILCS 77/10.30]

"Livestock waste" means livestock excreta and associated losses, bedding, wash waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock. [510 ILCS 77/10.35]

"Livestock waste handling facility" means individually or collectively those immovable constructions or devices, except sewers, used for collecting, pumping, treating, or disposing of livestock waste or for the recovery of by-products from the livestock waste. Two or more livestock waste handling facilities under common ownership and where the facilities are not separated by a minimum distance of 1/4 mile shall be considered a single livestock waste handling facility. [510 ILCS 77/10.40]

"Modified" means structural changes to a lagoon that increase its volumetric capacity. [510 ILCS 77/10.43]

"New facility" means a livestock management facility or a livestock waste handling facility the construction or expansion of which is commenced on or after May 21, 1996 (the effective date of the Livestock Management Facilities Act). Expanding a facility where the fixed capital cost of the new components constructed within a 2-year period does not exceed 50% of the fixed capital cost of a comparable entirely new facility shall not be deemed a new facility as used in the Livestock Management Facilities Act. [510 ILCS 77/10.45]

"Non-farm residence" means any residence which is not a farm residence. [510 ILCS 77/10.47]

"Occupied residence" means a house or other type of shelter that is

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

according to the USDA soil texture classification scheme includes soil textures of sand, and loamy sand, and portions of sandy loam and sandy clay loam.

intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, "intended or used for human occupancy" means running water and sanitation are provided within the residence.

a) The Board incorporates the following materials by reference:  
1) APHA. American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005, (202) 789-5600, "Standard Methods for the Examination of Water and Wastewater", 19th Edition, 1995.

"Owner or operator" means any person who owns, leases, controls, or supervises a livestock management facility or livestock waste-handling facility. [510 ILCS 77/10.50]

2) ASAE. American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085-9659, (616) 429-5585: "Design of Anaerobic Lagoons for Animal Waste Management", ASAE Standards 1992, ASAE EP403.1, 1992, pp. 498-500.

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity or their legal representative, agent, or assigns. [510 ILCS 77/10.55]

3) NRTS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600, "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA Publication No. EPA-600/R-93/100 (August 1993), Doc. No. PB 94-120821.

"Placed in service" means the placement of livestock waste in a livestock waste lagoon upon the completion of construction or modification in accordance with the requirements of this Part.

4) USDA-NRCS. United States Department of Agriculture - Natural Resources Conservation Service, 1902 Fox Drive, Champaign, IL 61820, "Waste Treatment Lagoon", Illinois Field Office Technical Guide, Section IV, IL359, p. 5, June 1992.

"Populated area" means any area where at least 10 inhabited non-farm residences are located or where at least 50 persons frequent a common place of assembly or a non-farm business at least once per week. [510 ILCS 77/10.60]

b) This Section incorporates no later amendments or editions.

Section 506.105 Recordkeeping

- a) The Department shall maintain a file for all facilities registering or otherwise filing documents with the Department under these regulations.
- b) The file shall contain all registration materials, along with all supporting data and justifications, records of Department certification and determinations, groundwater monitoring results (if required), waste management plans (if required), and any other information submitted to the Department by the owner or operator of a facility.
- c) Copies of materials in the file for a registered facility shall be available for public inspection.

Section 506.106 Alternatives, Modifications and Waivers

- a) All requests for alternatives, modifications, and waivers to these regulations, where allowed by Section 15(a) and (e) of the Act [510 ILCS 77/15(a), (e)] or this Part (Sections 506.202(d), 506.204(h), 506.205(f), 506.206(j), 506.209(a)(2)) shall be made in writing to the Department. Construction may not begin or continue until the request

"Residence" means a house or other structure, including all attachments to the house or structure, which is used as a place of human habitation.

"Sand" means unconsolidated materials, where 70% or more of the particles are of size 0.06 millimeters to 2.00 millimeters, and which



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- for alternative, modification, or waiver is granted.
- b) Each request for an alternative, modification, or waiver shall contain a certification from a Licensed Professional Engineer or Licensed Professional Geologist, as relevant, that the grant of the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements.
- c) The Department shall notify the applicant in writing of its determination within 30 days after receipt of the request for an alternative, modification, or waiver. To grant the requested alternative, modification, or waiver, the Department must determine that the modification is at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the stated requirements or that the alternative or waiver is at least as protective as the stated requirements.

## SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

**Section 506.201 Applicability**

- a) This Subpart applies to any lagoon that is new or modified and has not been placed in service as of the effective date of this Part.
- b) For the purposes of this Subpart the number of animal units at a livestock management facility is the maximum design capacity of the livestock management facility.
- c) In addition, a lagoon registered and certified pursuant to the emergency rules adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996 and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, shall be considered as registered and certified pursuant to this Subpart.

**Section 506.202 Site Investigation**

- a) The owner or operator of a new or modified livestock waste lagoon shall conduct a site investigation in accordance with the requirements of this Section to determine if aquifer material is present (or not present) within 50 feet of the planned bottom of the lagoon.
- b) The owner or operator shall perform one or more soil borings which shall be located within the final lagoon area or within 20 feet of the final exterior berm toe. The boring shall be performed to determine the presence of aquifer material as follows:
- 1) The soil boring shall extend to a depth that includes 50 feet from the bottom of lagoon native soil or to bedrock;
  - 2) If bedrock is encountered, additional soil borings may be necessary to verify the presence of aquifer material;
  - 3) Continuous samples shall be recovered from each soil boring to ensure that no gaps occur in the sample column; and

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- 4) Upon completion, the boring(s) shall be properly abandoned and sealed pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120.
- c) If the Department determines that additional soil borings are necessary to ensure the protection of the groundwater, surface water and the structural integrity of the livestock waste management facility, the Department shall require additional soil borings.
- d) As an alternative to performing the soil boring(s) required under subsection (b) or (c) of this Section, the owner or operator of a livestock waste lagoon may propose to the Department to utilize alternative information sources. The Department shall evaluate the proposal; shall determine whether the alternative information source will result in a site investigation that will be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as would have resulted from data resulting from soil borings; and shall notify the owner or operator of the Department's finding.
- e) The site investigation in accordance with subsection (b), (c) or (d) of this Section shall be conducted under the direction of a Licensed Professional Engineer or Licensed Professional Geologist. Upon completion of the site investigation as required under subsection (b), (c) or (d) of this Section, the supervising Licensed Professional Engineer or Licensed Professional Geologist shall certify that the site investigation meets all the applicable requirements of this Section, and whether aquifer material shall be considered present (or not present) within 50 feet of the planned bottom of the lagoon in accordance with Section 506.203 of this Part. Such certification shall include all supporting data and justification.

**Section 506.203 Registration**

- a) Prior to new construction or modification of any earthen livestock waste lagoon after the effective date of this Part, such earthen livestock waste lagoon shall be registered by the owner or operator with the Department on a form provided by the Department in accordance with the requirements of this Section. Lagoons constructed prior to the effective date of this Part may register with the Department at no charge. [510 ILCS 77/15(b)]
- b) The registration form, accompanied by a \$50 fee, shall include the following:
- 1) Name(s) and address(es) of the owner and operator who are responsible for the livestock waste lagoon;
  - 2) general location of lagoon;
  - 3) design construction plans and specifications (including a lagoon plot plan with dimensions and elevations);
  - 4) specific location information (noted on a facility site map or the lagoon plot plan):
    - A) The location and distance to the nearest private or public



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

potable well;

- B) The location and distance to the closest occupied private residence (other than any occupied by the owner or operator);
- C) The location and distance to the nearest stream;
- D) The location and distance to the nearest populated area;
- E) The location and distance to the nearest abandoned or plugged well, drainage well or injection well; and
- F) The location of any subsurface drainage lines within 100 feet of the lagoon;

5) *Anticipated beginning and ending dates of lagoon construction;*

6) *Type of livestock and number of animal units;*

- 7) A certification by the supervising Licensed Professional Engineer or Licensed Professional Geologist, accompanied by supporting justification and data, certifying that the site investigation meets all the applicable requirements of Section 506.202 of this Part, whether aquifer material is considered present (or not present) within 50 feet of the planned bottom of the lagoon; and
- 8) Where applicable, a copy of the synthetic liner manufacturer's compatibility statement and liner maintenance guidelines. [510 ILCS 77/15(b)]

c) *The Department upon receipt of a livestock waste lagoon registration form shall review the form to determine that all required information has been provided. The person filing the registration shall be notified within 15 working days of receipt by the Department that registration is complete or that clarification information is needed. No later than 10 working days after the receipt of the clarification information, the Department shall notify the owner or operator that registration is complete or that additional clarification information is needed. [510 ILCS 77/15(b)]*

d) *The Department may, as a condition of the issuance of a livestock waste lagoon registration, conduct periodic site inspections of a livestock waste lagoon to assess its degree of compliance with the requirements of the Livestock Management Facilities Act [510 ILCS 77] and the requirements of this Part. The person making any inspection shall comply with reasonable animal health protection procedures as requested by the owner or operator. [510 ILCS 77/15(b)]*

e) *Construction shall not begin until 30 days after submittal of a registration form by certified mail to the Department. [510 ILCS 77/15(b)]*

# Section 506.204 Lagoon Design Standards

- a) The owner or operator of any livestock waste lagoon subject to this Part shall construct or modify the lagoon in accordance with:
  - 1) "Design of anaerobic lagoons for animal waste management", ASAE Engineering Practice 403.1, as updated by ASAE Engineering Practice 403.2; or the guidelines published by the United States

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

*Department of Agriculture's Natural Resource Conservation Service titled "Waste Treatment Lagoon", which are incorporated by reference in 35 Ill. Adm. Code 506.104; and*

- 2) *The additional design standards specified in subsections (c) through (h) of this Section. [510 ILCS 77/15(a)]*
- b) *The Department may require changes in design or additional requirements to protect groundwater, such as extra liner depth or synthetic liners, when it appears groundwater could be impacted. [510 ILCS 77/15(a)]*
- c) *The owner or operator shall conduct a site investigation in accordance with Section 506.202 of this Part to determine if aquifer material is present (or not present) within 50 feet of the planned bottom of the lagoon.*

d) *The owner or operator shall, as a part of the lagoon design, include the use of a liner and implement groundwater monitoring in accordance with following conditions:*

- 1) *If the uppermost aquifer material is located above or within 20 feet of the lowest point of the planned lagoon bottom (as measured from the top of any proposed liner), then the lagoon design shall include both a liner and groundwater monitoring.*
- 2) *If the uppermost aquifer material is located between 20 to 50 feet from the lowest point of the planned lagoon (as measured from the top of any proposed liner), then the lagoon design shall include a liner, but no groundwater monitoring is required.*
- 3) *If no aquifer material is located within 50 feet from the lowest point of the planned lagoon (as measured from the top of any proposed liner), then the lagoon design shall require neither a liner nor groundwater monitoring.*

e) *If the owner or operator determines that a liner is required for the lagoon pursuant to this Section, the design of the lagoon shall include an in-situ soil liner, borrowed clay or clay/bentonite mixture, or a synthetic liner meeting the requirements of Section 506.205 of this Part.*

f) *If the owner or operator determines that groundwater monitoring is required for the lagoon pursuant to this Section, the design of lagoon shall include the implementation of a groundwater monitoring program in accordance with Section 506.206 of this Part.*

g) *Any livestock waste lagoon subject to the provisions of this Part shall meet or exceed the following:*

- 1) *Berm:*
  - A) *The minimum berm top width shall be 8 feet;*
  - B) *The berm may contain no outlet piping that extends through the berm unless the piping discharges to another lagoon;*
- 2) *Berm slope:*
  - A) *Exterior and normally exposed interior (above the liquid level elevation corresponding to the summation of the sludge volumes and minimum design volume) earthen walls shall have side slopes not steeper than a 3 to 1 ratio of horizontal to*

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

vertical and a vegetative cover shall be established on any exposed berm areas and kept moved or otherwise maintained to eliminate erosion or other berm deterioration;

- B) Interior berm earthen walls below the liquid level elevation corresponding to the summation of the sludge volumes and minimum design volume shall have side slopes not steeper than a 3 to 1 ratio of horizontal to vertical; or a 2 to 1 ratio of horizontal to vertical if designed by a Licensed Professional Engineer and maintained to eliminate berm deterioration;

- 3) The lagoon's total design volume shall be not less than the volume calculated as the summation of the following:

- A) A minimum design volume, as calculated pursuant to subsection 5.4.1.1, ASAE EP403.2, ASAE Standards 1993, pp. 543-545;
- B) A livestock waste volume, which shall be sufficient to store the waste generated by the facility for a period not less than 270 days as determined in accordance with ASAE EP403.2, ASAE Standards 1993, p. 543;
- C) Runoff and wash down volumes, based on a 6-inch rainfall covering the lagoon surface and any other areas such as open lots, roofs or other surfaces where collected precipitation is directed into the lagoon plus the volume of any wash down liquids utilized within the facility which are also directed into the lagoon; and
- D) A sludge accumulation volume, as calculated pursuant to subsection 5.4.1.4, ASAE EP403.2, ASAE Standards 1993, p. 545;

- 4) In addition to the lagoon's total design volume, a freeboard shall be provided as follows:

- A) For lagoons serving a livestock management facility with a maximum design capacity of less than 300 animal units and not collecting runoff from areas other than the exposed surface of the lagoon (including associated interior berm slopes and flat berm top areas), the top of the settled embankment shall be not less than 1 foot above the fluid surface level of the lagoon total design volume; or
- B) For all other lagoons, the top of the settled embankment shall be not less than 2 feet above the fluid surface level of the lagoon total design volume;

- 5) Subsurface drainage lines in the immediate area of the livestock waste lagoon shall be removed or relocated to provide for a minimum separation distance of not less than 50 feet between the outermost extent of the lagoon (exterior toe of the berm) and the subsurface drainage line;

- 6) The minimum separation distance between the outermost extent of a lagoon (exterior toe of the berm) and any potential route of groundwater contamination, as defined in the Illinois

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

Environmental Protection Act [415 ILCS 5], shall be not less than 100 feet. In addition, the minimum separation distance between the outermost extent of a lagoon (exterior toe of the berm) and a non-potable well, an abandoned or plugged well, drainage well or injection well shall be not less than 100 feet;

- 7) The design and construction of the lagoon shall include the installation of a lagoon liquid level board or staff gauge within the interior of the liquid storage volume. The liquid level board or staff gauge shall include a mark at the liquid level elevation corresponding to the summation of the sludge volume and minimum design volume and shall be designated as the "STOP PUMPING" elevation. The liquid level board or staff gauge shall also be marked at the liquid level elevation corresponding to the summation of the sludge volume, minimum design volume, and livestock waste volume and shall be designated as the "START PUMPING" elevation;
- 8) Water shall be added to a newly constructed or modified lagoon to at least 60% of the design volume prior to the initial addition of waste; and
- 9) The location of the lagoon and the associated livestock management facility shall be in compliance with all setback provisions of the Illinois Environmental Protection Act [415 ILCS 5], the Livestock Management Facilities Act [510 ILCS 77], and the rules promulgated thereunder.

- h) *The owner or operator of the earthen livestock lagoon may, upon written request and with written approval from the Department, modify or exceed these standards in order to meet site specific objectives. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]*

## Section 506.205 Liner Standards

- a) The design of a liner constructed from in-situ soils, borrowed clay or a clay/bentonite mixture, or a synthetic liner pursuant to Section 506.204(d) of this Part shall comply with the requirements of this Section.
- b) A liner constructed using in-situ soil or borrowed clay or clay/bentonite mixtures shall meet the following standards:
- 1) The minimum liner thickness shall be 2 feet;
  - 2) The liner shall be constructed in lifts not to exceed 6 inches in thickness;
  - 3) The liner shall be compacted to achieve a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  centimeters/second; and
  - 4) The construction and compaction of the liner shall be carried out to reduce void spaces and allow the liner to support the loadings imposed by the waste disposal operation without settling.



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

c) Any synthetic liner used in the construction of a livestock waste lagoon shall meet the following standards:

- 1) The liner shall be designed to perform equivalent to or better than a liner that conforms to subsection (b) of this Section;
- 2) The liner manufacturer shall provide to the owner or operator the liner maintenance guidelines and shall certify that the liner is chemically compatible with:
  - A) The livestock waste being stored; and
  - B) The supporting soil materials;

3) The liner shall be supported by a compacted base area from sharp objects;

4) The liner shall have sufficient strength and durability to function at the site for the design period under the maximum expected loadings imposed by the waste and equipment and stresses imposed by settlement, temperature, construction and operation;

5) The liner seams shall be made in the field according to the manufacturer's specifications. All sections shall be arranged so that the use of field seams is minimized and seams are oriented in the direction subject to the least amount of stress; and

6) The owner or operator shall maintain a copy of the manufacturer's compatibility statement and liner installation and maintenance guidelines at the facility.

d) The design, construction and installation of the liner in accordance with this Section shall be conducted under the direction of a Licensed Professional Engineer. Upon completion of construction or installation of the liner, the supervising Licensed Professional Engineer shall certify that the liner meets all the applicable requirements of this Section. Such certification shall include all supporting justification and data.

e) The owner or operator of a livestock waste lagoon shall submit to the Department a copy of the Licensed Professional Engineer's Certification prior to placing the lagoon in service in accordance with Section 506.207 of this Part.

f) The owner or operator of the earthen livestock lagoon may, upon written request and with written approval from the Department, modify or exceed these standards in order to meet site specific objectives. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]

## Section 506.206 Groundwater Monitoring

a) The owner or operator of any livestock waste lagoon required to implement groundwater monitoring pursuant to Section 506.204(d) of this Part shall implement a monitoring program which meets the requirements of this Section.

b) The groundwater monitoring network shall consist of a minimum of three

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

monitoring wells on the basis of local groundwater conditions within 20 feet of the exterior toe of the berm with at least two wells down gradient of the lagoon. For the purposes of groundwater monitoring network design, multiple cell lagoons shall be considered as a single lagoon.

c) The monitoring wells shall be installed in accordance with the following:

- 1) The requirements of Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.170;
- 2) The top of the well screen shall be set at the estimated seasonal low water table elevation;

- 3) Monitoring wells shall utilize a five foot screened interval; and
- 4) The screen shall be set in a sand pack of no less than five feet and no greater than seven feet.

d) Prior to placing the lagoon in service, water level measurements shall be made at each monitoring well to establish the local groundwater gradient at the lagoon site.

e) The owner or operator shall sample each monitoring well at least once prior to placing the lagoon in service and at least quarterly thereafter. The samples shall be collected and analyzed consistent with the methods specified in Section 506.104(a)(1) and (3) of this Part for each of the following:

- 1) Nitrate-nitrogen;
- 2) Phosphate-phosphorous;
- 3) Chloride;
- 4) Sulfate;
- 5) Ammonia-nitrogen;
- 6) *Escherichia coli* or fecal coliform; and
- 7) Fecal Streptococcus.

f) The Department may collect and analyze samples or split samples from monitoring wells installed pursuant to this Section at the Department's discretion. The Department shall provide notice to the owner or operator of the livestock waste lagoon of such activity and shall comply with reasonable animal health protection procedures as requested by the owner or operator. [510 ILCS 77/15(b)]

g) Analytical results as determined in subsection (e) of this Section shall be submitted to the Department within 45 days after sample collection and shall include a discussion relative to the significance of the results. Such discussion of significance shall include:

- 1) A comparison of the results to the initial sampling made prior to the lagoon being placed in service; and
- 2) A description of any proposed response action necessary to mitigate potential impacts to groundwater.

h) The Department shall review the submittal provided pursuant to subsection (g) of this Section, evaluate the proposed response action, and provide a time frame for the correction of any identified deficiencies. As a result of the evaluation, the Department may approve or modify the monitoring program or response action including,



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

but not limited to, the following:

- 1) Increase or decrease the monitoring well sampling frequency;
- 2) Add or delete items from the list of sample analytes; or
- 3) Require changes to the design, construction or operation of the lagoon or changes in the operation of the livestock management facility which shall be implemented by the owner or operator within the time frame established by the Department.
- i) Failure of the owner or operator to submit the information required pursuant to subsection (g) of this Section or to implement the response action approved or modified by the Department shall be considered a failure to construct a lagoon in accordance with the requirements of this Part and shall subject the owner or operator to penalties set forth in this Part and the Livestock Management Facilities Act [510 ILCS 77].
- j) The owner or operator of the earthen livestock lagoon may, upon written request and with written approval from the Department, modify or exceed these standards in order to meet site specific objectives. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste management facility as the requirements of this Part. [510 ILCS 77/15(a)]

## Section 506.207 Certification of Construction

- a) The Department shall inspect an earthen livestock waste lagoon at least once during the pre-construction, construction or post-construction phase and shall require modifications when necessary to ensure the project will be in compliance with the requirements of this Part. [510 ILCS 77/15(b)]
- b) Upon completion of construction or installation of a liner, the supervising Licensed Professional Engineer shall certify that the liner meets all the applicable requirements of Section 506.205 of this Part. Such certification shall be submitted to the Department prior to placing the lagoon in service and shall include supporting data and justification.
- c) Upon completion of the construction or modification, but prior to placing the lagoon in service, the owner or operator of the livestock waste lagoon shall certify on a form provided by the Department that the lagoon has been constructed or modified in accordance with the standards set forth in subsection (a) of Section 15 of the Livestock Management Facilities Act [510 ILCS 77] and the requirements of this Part and that the information provided on the registration form and other supporting documents as required by this Part is correct. The certification notice to the Department shall include a certification statement and signature. [510 ILCS 77/15(b)]
- d) The owner or operator of the lagoon may proceed to place the lagoon in service no earlier than 10 working days after submitting to the Department a certification of compliance statement. [510 ILCS

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

77/15(b)]

## Section 506.208 Failure to Register or Construct in Accordance with Standards

- a) The owner or operator of any earthen livestock waste lagoon subject to registration that has not been registered or constructed in accordance with standards set forth in subsection (a) of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and in this Part shall, upon being identified as such by the Department, be given written notice by the Department to register and certify the lagoon within 10 working days after receipt of the notice. The Department may inspect such lagoon and require compliance in accordance with subsections (a) and (b) of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and this Part. If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice, the Department may issue a cease and desist order until such time as compliance is obtained with the requirements of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and this Part. Failure to construct the lagoon in accordance with the construction plan and Department recommendations is a business offense punishable by a fine of not more than \$5,000. [510 ILCS 77/15(f)]
- b) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice which addresses violations occurring during lagoon construction, a cease and desist order to stop construction may be issued by the Department. Changes shall be made to the lagoon by the owner or operator to ensure construction according to the provisions of the Livestock Management Facilities Act [510 ILCS 77] and this Part. The cease and desist order shall be canceled by the Department upon submission of the registration materials by the lagoon owner or operator to the Department, and after the Department's review of the construction plans and specifications and lagoon registration materials, and after determination of compliance with the Livestock Management Facilities Act and this Part by the Department.
- c) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations which occur after completion of lagoon construction, an operational cease and desist order may be issued by the Department. Any necessary changes shall be made to the lagoon by the lagoon owner or operator to comply with the Livestock Management Facilities Act and this Part. The operational cease and desist order shall be canceled by the Department after the Department determines compliance with the Livestock Management Facilities Act and this Part.

## Section 506.209 Lagoon Closure and Ownership Transfer

- a) When any earthen livestock waste lagoon is removed from service, it

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

*shall be completely emptied. Appropriate closure procedures shall be followed as determined by the requirements of this Part.* [510 ILCS 77/15(e)]

1) In the event that any earthen livestock waste lagoon is to be removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] shall be met and the owner or operator shall submit a lagoon closure plan to the Department for review and approval. The plan shall provide for the following:

A) The sampling, analysis and reporting of results of all remaining livestock waste, sludge and minimum six-inch thickness of soil from throughout the lagoon interior consistent with the requirements of Section 506.312 of this Part;

B) The removal of all remaining livestock waste including sludge, the removal of a minimum 6 inch thickness of soil from throughout the lagoon interior, and the application of these materials to crop land at agronomic rates consistent with the provisions of the site livestock waste management plan or their otherwise proper disposal;

C) The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports and other waste conveyance structures;

D) The proper management of any impounded precipitation in the remaining excavation if it is not immediately filled and the area immediately returned to its pre-construction condition;

E) The proper abandonment of any monitoring wells installed pursuant to Section 506.206 of this Part which shall be conducted pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120; and

F) A proposed time frame for the completion of the closure activities which will be no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.

2) The Department shall review and approve or request additional information relative to the lagoon closure plan. *The Department may also grant a waiver to any of the before-stated closure requirements that will permit the lagoon to be used for an alternative purpose.* [510 ILCS 77/15(e)]

3) Upon completion of the lagoon closure activities as prescribed by the Department-approved closure plan, the owner or operator shall notify the Department to allow for post closure inspection. The Department shall conduct a site inspection and issue a written notification of closure completion or inform the owner or operator of any unresolved closure issues.

b) Upon a change in the ownership of a registered earthen livestock waste lagoon, the new owner shall notify, in writing, the Department of the change within 30 working days of the closing of the transaction. [510

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

ILCS 77/15(e)]

## SUBPART C: WASTE MANAGEMENT PLAN

## Section 506.301 Purpose

Livestock waste management plans shall be prepared by livestock management facility owners or operators to provide for adequate land area for the proper application of livestock waste at rates not to exceed the agronomic nitrogen demand of the crops to be grown when averaged over a 5-year period [510 ILCS 77/20(f)(4)].

## Section 506.302 Scope and Applicability

a) A waste management plan shall be prepared according to the requirements contained in Section 20 of the Livestock Management Facilities Act [510 ILCS 77/20] and in this Subpart. *The application of livestock waste to the land is an acceptable, recommended, and established practice in Illinois. However, when livestock waste is not applied in a responsible manner, it may create pollutional problems. It should be recognized that, in most cases, if the agronomic nitrogen rate is met, the phosphorus applied will exceed the crop requirements, but not all of the phosphorus may be available for use by the crop. It will be considered acceptable, therefore, to prepare and implement a waste management plan based on the nitrogen rate.* [510 ILCS 77/20(f)]

b) The livestock management facility owner or operator at a facility of less than 1,000 animal units shall not be required to prepare and maintain a waste management plan. [510 ILCS 77/20(b)]

c) The livestock management facility owner or operator at a facility of 1,000 or greater animal units but less than 7,000 animal units shall prepare, maintain and implement a waste management plan and comply with the following: [510 ILCS 77/20(c)]

1) For facilities which commence operations or reach or exceed 1,000 animal units after the effective date of this Part, the owner or operator shall prepare, maintain, and implement a waste management plan within 60 working days after commencing operations or exceeding 1,000 animal units;

2) Prior to the expiration of the waste management plan preparation period, the owner or operator shall submit to the Department a form certifying that a waste management plan has been prepared. The form shall also list the location of the plan;

3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours; and

4) Notwithstanding the above provisions, a livestock management facility subject to this subsection (c) may be operated on an



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

*interim basis but not to exceed 6 months after the effective date of this Part to allow for the owner or operator of the facility to develop a waste management plan. [510 ILCS 77/20(c)]*

d) *The livestock management facility owner or operator at a facility of 7,000 or greater animal units shall prepare, maintain, implement, and submit to the Department the waste management plan for approval [510 ILCS 77/20(d)] and comply with the following:*

- 1) For facilities which commence operations after the effective date of this Part, the owner or operator shall submit a waste management plan to the Department. The facility shall not commence operation before the Department approves the plan;
  - 2) For existing facilities that reach or exceed 7,000 animal units through expansion, the owner or operator shall submit to the Department a waste management plan within 60 working days after reaching or exceeding 7,000 animal units for approval by the Department; and
  - 3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours.
- e) A separate waste management plan shall be developed for each livestock waste handling facility. Livestock waste from each different type of livestock waste storage structure or system shall be accounted for in separate waste management plans or as separate sections of one plan. Waste from different types of storage structures may be applied to the same land provided that the nitrogen rate to obtain targeted crop yield goals is not exceeded.
- f) Notwithstanding the above provisions, a facility owner or operator who prepared a waste management plan pursuant to the emergency amendment adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996, and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, shall be deemed to have prepared a waste management plan pursuant to this Subpart.
- g) For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility shall be determined as the maximum design capacity of the livestock management facility which is being served by the livestock waste handling facility.

**Section 506.303 Waste Management Plan Contents**

The Livestock Waste Management Plan shall contain the following items:

- a) Name, address, and phone number of the owner(s) of the livestock facility;
- b) Name, address, and phone number of the manager or operator if different than the owner(s);
- c) Address, phone number, and plat location of the facility, and directions from nearest post office;
- d) Type of waste storage for the facility;

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- e) Species, general size, number of animals, and number of animal units at the facility;
- f) Aerial photos and maps outlining fields available and intended for livestock waste applications with available acreage listed and with residences, non-farm businesses, common places of assembly, streams, wells, waterways, lakes, ponds, rivers, drainage ditches, and other water sources indicated;
- g) For application fields not owned or rented, copies of waste application agreements between the owner or operator of the livestock facility and the owner of the land where livestock waste will be applied;
- h) An estimate of the volume of waste to be disposed of annually [510 ILCS 77/20(f)(1)];
- i) Cropping schedule for each field for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year;
- j) Targeted crop yield goal for each crop in each field;
- k) Estimated nutrient content of the livestock waste;
- l) Livestock waste application methods;
- m) Calculations showing the following:
  - 1) Amount of available livestock waste for application;
  - 2) Amount of nitrogen available for application;
  - 3) Nitrogen loss due to method of application;
  - 4) Amount of plant-available nitrogen including mineralization of organic nitrogen;
  - 5) Amount of nitrogen required by each crop in each field based on targeted crop yield goal;
  - 6) Nitrogen credits from previous crops, from other sources of fertilizer applied for the growing season, and from any manure applications during the previous three years for each application field;
  - 7) Livestock waste application rate based on nitrogen for each application field; and
  - 8) Land area required for application;
- n) A listing of fields and the planned livestock waste application amounts for each field;
- o) A provision that livestock waste applied within 1/4 mile of any residence not part of the facility shall be injected or incorporated on the day of application. However, livestock management facilities and livestock waste handling facilities that have irrigation systems in operation prior to May 21, 1996, or existing facilities applying waste on frozen ground are not subject to the provisions of this subsection (o) [510 ILCS 77/20(f)(5)];
- p) A provision that livestock waste may not be applied within 200 feet of surface water unless the water is upgrade or there is adequate diking and waste will not be applied within 150 feet of potable water supply wells [510 ILCS 77/20(f)(6)];
- q) A provision that livestock waste may not be applied in a 10-year flood



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

plain unless the injection or incorporation method of application is used [510 ILCS 77/20(f)(7)]:

- r) A provision that livestock waste may not be applied in waterways. For the purposes of this Part, a grassed area serving as a waterway may receive livestock waste through an irrigation system if there is no runoff, the distance from applied livestock waste to surface water is greater than 200 feet, the distance from applied livestock waste to potable water supply wells is greater than 150 feet; the distance from applied livestock waste to a non-potable well, an abandoned or plugged well, a drainage well, or an injection well is greater than 100 feet; and precipitation is not expected within 24 hours [510 ILCS 77/20(f)(8)];
- s) A provision that if waste is spread on frozen or snow-covered land, the application will be limited to land areas on which:
  - 1) Land slopes are 5% or less; or
  - 2) Adequate erosion control practices exist [510 ILCS 77/20(f)(9)];
- t) For livestock facilities utilizing an earthen lagoon or other earthen waste storage structure, a provision that the owner, operator, or certified livestock manager shall inspect all berm tops, exterior berm sides, and non-submerged interior berm sides for evidence of erosion, burrowing animal activity, and other indications of berm degradation on a frequency of not less than once every two weeks; and
- u) A provision that livestock waste may not be applied during a rainfall or to saturated soil and that conservative waste loading rates will be used in the case of a high water table or shallow earth cover to fractured bedrock. Caution should be exercised in applying livestock wastes, particularly on porous soils, so as not to cause nitrate or bacteria contamination of groundwaters.

## Section 506.304 Livestock Waste Volumes

The volume of available livestock waste for application, as required in Section 506.303(m)(1) of this Part, shall be determined from site specific measurements of the waste storage structure. Calculations and a description of the volume determination shall be included in the waste management plan.

## Section 506.305 Nutrient Content of Livestock Waste

- a) For new facilities without a waste management plan or facilities where a waste management plan is being initially prepared pursuant to this Part, the owner or operator shall obtain the nitrogen content of the livestock waste, as required in Section 506.303(m)(2) of this Part, from the results of a laboratory analysis of livestock waste samples from the waste storage facility, or from estimated values provided by the University of Illinois Cooperative Extension Service or the Natural Resources Conservation Service of the United States Department of Agriculture.
- b) The livestock waste handling facility owner or operator shall annually

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

obtain a laboratory analysis of the nutrient content of the livestock waste to be applied to land as provided within the waste management plan. Livestock waste shall be sampled during the application process. Multiple subsamples shall be obtained and may be combined into one sample for analysis so that a representative sample is used for preparation of the waste management plan. A sample taken during waste application the previous year can be used as a representative sample of the waste to be applied the following year unless there has been a change in the waste management practices.

- c) Livestock waste sampling shall be performed under the direction of a certified livestock manager to ensure a representative sample from the livestock waste storage facility and to preserve the integrity of the sample.
- d) The laboratory analysis of the livestock waste sample shall include, but not be limited to, total nitrogen, ammonium nitrogen, total phosphorus, and total potassium. Results of the analysis shall be included in the waste management plan.

## Section 506.306 Adjustments to Nitrogen Availability

Adjustments shall be made to nitrogen availability to account for nitrogen loss from livestock waste due to method of application, as required in Section 506.303(m)(3), and to account for the conversion of organic nitrogen into a plant available form, as required in Section 506.303(m)(4) of this Part.

## Section 506.307 Targeted Crop Yield Goal

- a) The targeted crop yield goal, as required in Section 506.303(m)(5) of this Part, shall be determined for each field where the livestock waste is to be applied. The targeted crop yield goal shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The following listing of sources of data shall be utilized to determine the targeted crop yield goal.
  - 1) Proven yields. The proven yield shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The owner or operator shall indicate the method used to determine the proven yield. Data from years with crop disasters may be discarded. Proven yields shall be used unless there is sound agronomic basis for predicting a different targeted crop yield goal;
  - 2) Crop insurance yields. A copy of the crop insurance yields shall be included in the plan; or
  - 3) Farm Service Agency - United States Department of Agriculture yields. A copy of the assigned crop yields shall be included in the plan.
- b) Soils based yield data from the Natural Resources Conservation Service of the United States Department of Agriculture shall be used if the

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

owner or operator cannot obtain a targeted crop yield goal pursuant to subsection (a) of this Section. A soil map of the application areas shall be included in the plan. The targeted crop yield goal shall be determined by a weighted average of the soil interpretation yield estimates for the areas that will receive livestock waste.

**Section 506.309 Nitrogen Credits**

- a) Nitrogen credits shall be calculated by the livestock facility owner or operator, pursuant to Section 506.303(m)(6) of this Part, for nitrogen-producing crops grown the previous year, for other sources of nitrogen applied for the growing season, and for mineralized organic nitrogen in livestock waste applied during the previous three years.
- b) Nitrogen credits shall be calculated by the livestock facility owner or operator for the mineralized organic nitrogen in livestock waste applied during the previous three years at the rate of 50%, 25%, and 12.5%, respectively, of that mineralized during the first year.

**Section 506.310 Records of Waste Disposal**

Records of the livestock waste disposal shall include the following items:

- a) Date of livestock waste application;
- b) The field where livestock waste application was made;
- c) Method of livestock waste application;
- d) Livestock waste application rate;
- e) Number of acres receiving waste; and
- f) Amount of livestock waste applied.

**Section 506.311 Approval of Waste Management Plans**

- a) Department approval of livestock waste management plans shall be based on the following criteria:

- 1) Livestock waste application rate of nitrogen not to exceed the crop nitrogen requirements for targeted crop yield goals;
- 2) Demonstration of adequate land area for livestock waste application based on Section 506.303 of this Part; and
- 3) Completeness and accuracy of plan contents as specified in Section 506.303 of this Part.

- b) The owner or operator of the livestock management facility shall be notified by the Department within 30 working days after receipt of the livestock waste management plan that the plan has been approved or that further information or changes are needed. The owner or operator shall provide the information or changes within 30 working days.

**Section 506.312 Sludge Removal**

- a) Within 60 days prior to periodic removal of sludge from a livestock waste storage structure, the livestock facility owner or operator

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

shall test the sludge for nutrient content pursuant to Section 506.305(c) and (d) of this Subpart. Application of the sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown.

- b) Prior to the removal of the remaining livestock waste, soil, and sludge during a lagoon closure, the waste, soil, and sludge shall be tested for nutrient content pursuant to Section 506.305(c) and (d) of this Subpart. Application of the waste, soil, and sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown.

- c) Nitrogen requirements based on targeted yields for the crop to be grown may be met but shall not be exceeded by any combination of the following:

- 1) Livestock waste applications;
- 2) Periodic sludge applications; or
- 3) Remaining livestock waste, soil, or sludge applications during a waste storage structure closure.

**Section 506.313 Plan Updates**

- a) The waste management plan shall be reviewed annually by the livestock facility owner or operator and updated, if necessary, after receipt by the owner or operator of the nutrient content results from the laboratory analysis of the livestock waste as required in Section 506.305(b), (c), and (d) of this Subpart, but prior to the next application period of the livestock waste to the land.

- b) The waste management plan shall also be updated when at least one of the following occurs:

- 1) A change in the amount of land area needed to dispose of the livestock waste based upon a change in the waste volume to be disposed of, nitrogen content of the livestock waste, or other factors;
- 2) A change in land that is available for livestock waste application if the land is not currently included in the waste management plan;
- 3) Method of livestock waste disposal or application changes; or
- 4) Cropping sequence changes which alter the amount of livestock waste to be applied.

**Section 506.314 Penalties**

- a) Any person who is required to prepare, maintain, and implement a waste management plan and who fails to do so shall be issued a warning letter by the Department for the first violation and shall be given 30 working days to prepare a waste management plan. For failure to prepare, maintain, and implement a waste management plan, the person shall be fined an administrative penalty of up to \$500 by the Department and shall be required to enter into an agreement of



POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

- compliance to prepare, maintain, and implement a waste management plan within 30 working days. For failure to prepare, maintain, and implement a waste management plan after the second 30 day period or for failure to enter into a compliance agreement, the Department may issue an operational cease and desist order until compliance is attained. [510 ILCS 77/20(g)]
- b) The operational cease and desist order procedures may be suspended by the Department upon submittal of a waste management plan by the owner or operator to the Department. The cease and desist order shall be canceled by the Department upon approval of the waste management plan by the Department.
  - c) A waste management plan prepared as a result of a warning letter or compliance agreement shall be subject to approval by the Department.
  - d) Penalties shall not be imposed for excessive nitrogen application for unplanned cropping changes due to weather or other unforeseeable circumstances.

SUBPART D: CERTIFIED LIVESTOCK MANAGER

Section 506.401 Applicability

- a) A livestock waste handling facility serving 300 or greater animal units shall be operated only under the supervision of a certified livestock manager. Notwithstanding the before-stated provision, a livestock waste handling facility may be operated on an interim basis, but not to exceed 6 months, to allow for the owner or operator of the facility to become certified. For the purposes of this Subpart, being operated under the supervision of a certified livestock manager shall mean that the certified livestock manager shall be immediately available to the workers at a livestock waste handling facility either in person or via telecommunications and shall have the ability to be physically present at the livestock waste handling facility within one hour after notification. [510 ILCS 77/30(a)]
- b) Persons may become certified livestock managers by demonstrating an understanding of and competence for the operation of livestock waste handling facilities as established in Section 30 of the Livestock Management Facilities Act [510 ILCS 77] and further described in this Subpart. Livestock managers shall establish or re-establish certification when required to do so in accordance with Section 30 of the Livestock Management Facilities Act.
- c) A livestock manager certified pursuant to the emergency amendment adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996, and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, shall be considered as certified pursuant to this Subpart.
- d) For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility is the maximum design capacity of the livestock management facility which is being served by the

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED RULES

- e) livestock waste handling facility. For violations pertaining to the certified livestock manager requirements, the owner or operator shall be issued a warning letter for the first violation and shall be required to have a certified manager for the livestock waste handling facility within 30 working days. For failure to comply with the warning letter within the 30 day period, the person shall be fined an administrative penalty of up to \$500 by the Department and shall be required to enter into an agreement to have a certified manager for the livestock waste handling facility within 30 working days. For failure to comply with the agreement to have a certified manager for the livestock waste handling facility within the 30 day period or for failure to enter into a compliance agreement, the person shall be fined up to \$1,000 by the Department and shall be required to enter into an agreement to have a certified manager for the livestock waste handling facility within 30 working days. For continued failure to comply, the Department may issue an operational cease and desist order until compliance is attained. [510 ILCS 77/30(g)] The cease and desist order shall be canceled by the Department upon presentation to the Department of a valid certified livestock manager certificate issued in the name of the owner, operator, or current employee of the livestock facility.

SUBPART E: PENALTIES

Section 506.501 General

The penalties for violations of the Livestock Management Facilities Act [510 ILCS 77] and this Part shall be those as identified in the Livestock Management Facilities Act and further described in this Part and Subpart. Warning letters and written notices from the Department shall be sent via certified mail to the livestock facility owner or operator.

SUBPART F: FINANCIAL RESPONSIBILITY

Section 506.601 Applicability

Owners of new or modified lagoons registered under the provisions of the Livestock Management Facilities Act [510 ILCS 77] shall establish and maintain evidence of financial responsibility to provide for the closure of the lagoons and the proper disposal of their contents within the time provisions outlined in Section 17 of the Livestock Management Facilities Act. [510 ILCS 77/17]

Section 506.602 Evidence of Financial Responsibility

- a) Financial responsibility may be evidenced by any combination of the following:
  - 1) Commercial or private insurance;
  - 2) Guarantée;



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

- 3) Surety bond;
- 4) Letter of credit; or
- 5) Certificate of deposit or designated savings account. [510 ILCS 77/17]
- b) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon, the new owner shall establish and maintain evidence of financial responsibility at the same level of surety as the previous owner.

**Section 506.603 Level of Surety**

*The level of surety required shall be determined by rule and be based upon the volumetric capacity of the lagoon.* [510 ILCS 77/17]

## SUBPART G: SETBACKS

**Section 506.701 Applicability**

- a) All new livestock management or livestock waste handling facilities shall comply with the setback distances as established in Section 35 of the Livestock Management Facilities Act [510 ILCS 77/35] and with the provisions of this Subpart.
- b) Commencement of operations at a facility reconstructed within two years after partial or total destruction due to natural causes such as tornado, fire, flood, or earthquake, shall not be considered the location of a new livestock management or waste handling facility for setback purposes. Likewise, a residence partially or totally destroyed due to natural causes, such as tornado, fire, flood, or earthquake, shall retain its original setback for a period of no greater than two years, to allow for reconstruction of the residence.

**Section 506.702 Procedures**

- a) Grandfather provision: Facilities in existence prior to July 15, 1991. Livestock management facilities and livestock waste handling facilities in existence prior to July 15, 1991 shall comply with setbacks in existence prior to July 15, 1991, as set forth in the Illinois Environmental Protection Act and 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(a)]
- b) Grandfather provision: Facilities in existence on effective date and after July 15, 1991. Livestock management facilities and livestock waste handling facilities in existence on May 21, 1996 (the effective date of the Livestock Management Facilities Act) but after July 15, 1991 shall comply with setbacks in existence prior to May 21, 1996, as set forth in the Illinois Environmental Protection Act and 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(b)]
- c) New livestock management or livestock waste handling facilities. Any new facility shall comply with the following setbacks: [510 ILCS

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## 77/35(c)]

- 1) Residence and Non-Farm Residence: For purposes of determining setback distances, minimum distances shall be measured from the nearest corner of the residence to the nearest corner of the earthen waste lagoon or livestock management facility, whichever is closer.
- 2) Common Place of Assembly or Non-Farm Business: For the purposes of determining setback distances between a common place of assembly or non-farm business:
  - A) When the primary activity at a common place of assembly or non-farm business is an outdoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or livestock management facility to the nearest point on the legal property line of the common place of assembly or non-farm business.
  - B) When the primary activity at a common place of assembly or non-farm business is not an outdoor activity and is an indoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon or livestock management facility to the nearest corner of the structure where the indoor activity takes place.
- 3) A livestock management facility or livestock waste handling facility serving less than 50 animal units shall be exempt from setback distances as set forth in the Livestock Management Facilities Act but shall be subject to rules promulgated under the Illinois Environmental Protection Act.
- 4) For a livestock management facility or waste handling facility serving 50 or greater but less than 1,000 animal units, the minimum setback shall be 1/4 mile from the nearest occupied non-farm residence and 1/2 mile from the nearest populated area.
- 5) For a livestock management facility or livestock waste handling facility serving 1,000 or greater but less than 7,000 animal units, the setback is as follows:
  - A) For a populated area, the minimum setback shall be increased 440 feet over the minimum setback of 1/2 mile for each additional 1,000 animal units over 1,000 animal units.
  - B) For any occupied residence, the minimum setback shall be increased 220 feet over the minimum setback of 1/4 mile for each additional 1,000 animal units over 1,000 animal units.
- 6) For a livestock management facility or livestock waste handling facility serving 7,000 or greater animal units, the setback is as follows:
  - A) For a populated area, the minimum setback shall be 1 mile.
  - B) For any occupied residence, the minimum setback shall be 1/2 mile.
- d) Requirements governing the location of a new livestock management facility and new livestock waste-handling facility and conditions for exemptions or compliance with the maximum feasible location as

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

*provided in 35 Ill. Adm. Code 501.402 concerning agriculture related pollution shall apply to those facilities identified in subsections (b) and (c) of this Section. With regard to the maximum feasible location requirements, any reference to a setback distance in 35 Ill. Adm. Code 501.402 shall mean the appropriate distance as set forth in this Section. [510 ILCS 77/35(d)]*

*e) Setback category shall be determined by the design capacity in animal units of the livestock management facility. [510 ILCS 77/35(e)]*

*f) Setbacks may be decreased when innovative designs as approved by the Department are incorporated into the facility. [510 ILCS 77/35(f)]*

1) An owner or operator shall request a setback decrease in writing prior to construction.

2) An owner or operator shall attach to the request for decrease a certification by a Licensed Professional Engineer that in the professional judgment of the Licensed Professional Engineer the innovative designs incorporated into the facility will provide more odor protection than the original setbacks.

3) The Department shall notify the owner or operator of its determination within 30 days after the receipt of the request for decrease. In approving a reduction in setbacks due to innovative designs, the Department shall specifically find that such use of an innovative design will provide more odor protection than the original setbacks.

4) Where the Department grants such a decrease from the setbacks, the Department must maintain a file which includes all supporting data and justification which it relied upon in making its determination. This file is subject to public inspection.

*g) A setback may be decreased when waivers are obtained from owners of residences that are occupied and located in the setback area. [510 ILCS 77/35(g)] A setback also may be decreased when waivers are obtained from owners of non-farm businesses or common places of assembly that are located in the setback area.*

1) An owner or operator request for a setback decrease shall be in writing and submitted to the Department prior to construction.

2) An owner or operator shall attach to the request copies of the written and notarized waivers from all the owner(s) of the residence(s), non-farm business(es), and common place(s) of assembly that are located within the setback area.

3) Within 30 days after receipt of the request and waivers, the Department shall notify the owner or operator in writing of the setback decrease.

4) When such a decrease from the setbacks is requested, the Department must maintain a file which includes all supporting data and justification concerning the setback decrease. This file is subject to public inspection.

## Section 506.703 Initial Determination of Setbacks

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

The requirements of this Section do not apply to new livestock management facilities or new livestock waste handling facilities serving less than 50 animal units.

a) An owner or operator shall file a notice of intent to construct which meets the informational requirements of subsection (b) of this Section for a new livestock management facility or new livestock waste handling facility with the Department prior to construction to establish an initial determination of setbacks.

b) The notice of intent to construct shall contain a legal description of the land on which the livestock facility will be constructed; the name(s) and addresses of the owner(s) or operator(s) of the facility; the type and size of the facility and number of animal units; the names and addresses of the owner(s), including local, State and federal governments, of the property located within the setback area; the distance to the nearest populated area, residence, non-farm business and common place of assembly; a map or sketch showing the proposed facility and setbacks; and a statement identifying whether a request for decrease in setbacks, pursuant to Section 506.702(f) or (g), has been sought and whether the request has been granted or denied yet.

c) The owner or operator shall mail by certified mail the notice of intent to construct to the owner(s) of the property located within the setback distances. The owner(s) of the property located within the setback distances are presumed, unless established to the contrary, to be person shown by the current collector's warrant book to be the party in whose name the taxes were last assessed.

d) Within 30 days after receipt of the notice to construct, the Department shall notify the owner or operator in writing whether the setback distances have been met.

e) The date the notice of intent to construct is filed with the Department establishes the base date for the determination of whether residences, non-farm businesses, or common places of assembly exist for setback purposes and shall remain the base date if construction begins within one year following receipt of the Department's determination or if a lagoon registration form is filed with the Department within one year after receipt of the Department's determination of compliance with the setback distances.

f) If the Department determines that the owner or operator has complied with the setback requirements, later constructed or erected residences, non-farm businesses, or common places of assembly cannot operate to alter the setback as initially determined, subject to the limitation in subsection (e) of this Section.

g) Where an intent to construct has been filed, the Department must maintain a file which includes all filings and supporting data and justification which it relied upon in making its determination regarding compliance with the setback distances. This file is subject to public inspection.

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED RULES

## Section 506.704 Penalties

a) For violations of the setback distance requirements, the Department may issue one of the following to the owner or operator of the livestock management facility or livestock waste handling facility:

- 1) If during construction, a cease and desist order which prohibits further construction of the livestock management facility or livestock waste handling facility, prohibits entry of livestock into the livestock management facility, and prohibits use of the livestock waste handling facility; or
- 2) An operational cease and desist order.

b) A cease and desist order issued by the Department pursuant to subsection (a) of this Section shall be canceled by the Department pursuant to the following:

- 1) Submission to the Department of a valid waiver as provided for in Section 506.702(g) of this Subpart by the livestock management facility owner or operator or the livestock waste handling facility owner or operator; or
- 2) Verification by the Department of compliance with the appropriate setback distances as described in Section 35 of the Livestock Management Facilities Act [510 ILCS 77/35].

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Medical Payment

2) Code Citation: 89 Ill. Adm. Code 140

3) Section Numbers: Adopted Action:  
140.463 Amendment

4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

5) Effective Date of Amendments: May 23, 1997

6) Does this rulemaking contain an automatic repeal date? No

7) Do these Amendments contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: May 23, 1997

9) Notice of Proposal Published in Illinois Register: December 27, 1996 (20 Ill. Reg. 16153)

10) Has JCAR issued a Statement of Objections to these Adopted Amendments? No

11) Differences between proposal and final version: The following changes have been made in the proposed amendments during the public comment period.

At the end of subsection (e)(1)(C), the following language has been added: "When MediPlan Plus is implemented, HMOs, PHPs or Managed Care Community Networks (MCCNs) may serve as MCEs (see 89 Ill. Adm. Code 142.110 for definition of terms)."

In subsection (e)(2), "a HMO" has been changed to "an HMO" and "a MCE" has been changed to "an MCE".

In subsection (e)(3), both occurrences of "a HMO" have been changed to "an HMO".

At the end of subsection (e)(4), the following language has been added: "If the qualifying clinic did not have Medicaid clients registered as patients as of November 1996, the mutually agreed to Medicaid patient base shall be the number of Medicaid clients registered as patients of the qualifying clinic as of the sixth month the qualifying clinic receives transitional payments under this Section."

No other changes have been made in the text of the proposed amendments.

12) Have all the changes agreed upon by the agency and JCAR been made as



## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

indicated in the agreement letter issued by JCAR? Yes

13) Will these Amendments replace Emergency Amendments currently in effect?  
Yes

14) Are there any Amendments pending on this Part? Yes

Sections	Proposed Action	Illinois Register Citation
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140.3	Amendment	March 21, 1997 (21 Ill. Reg. 3423)
140.5	Amendment	March 21, 1997 (21 Ill. Reg. 3423)
140.420	Amendment	March 21, 1997 (21 Ill. Reg. 3423)
140.421	Amendment	March 21, 1997 (21 Ill. Reg. 3423)
140.TABLE B	Amendment	March 14, 1997 (21 Ill. Reg. 3042)

15) Summary and Purpose of Amendments: These amendments provide transitional payments for Federally Qualified Health Centers (FQHC) and certain encounter rate clinics for managing the health care needs of some clients under their care.

These changes concerning reimbursement for clinic services are a component of the Department's plan to ensure that access to health care is maintained and enhanced during this transition period to managed care under MediPlan Plus. It is expected that these new transitional payments will assist clinics in managing the health care of certain clients, maintain viability of providers that are critical to the delivery of primary care services to the Medicaid population, and encourage provider participation in MediPlan Plus.

It is anticipated that transitional payments to clinics under these amendments will result in an increase in expenditures of approximately \$1.3 million for fiscal year 1997.

16) Information and questions regarding these Adopted Amendments shall be directed to:

Joanne Jones  
Bureau of Rules and Regulations  
Illinois Department of Public Aid  
100 South Grand Avenue East, Third Floor  
Springfield, Illinois 62762  
(217) 524-0081

The full text of the Adopted Amendments begins on the next page:

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER d: MEDICAL PROGRAMS

PART 140  
MEDICAL PAYMENT

## SUBPART A: GENERAL PROVISIONS

	Incorporation By Reference	Section
140.1	Medical Assistance Programs	140.1
140.2	Covered Services Under Medical Assistance Programs	140.2
140.3	Covered Medical Services Under AFDC-MANG for non-pregnant persons who are 18 years of age or older (Repealed)	140.3
140.4	Covered Medical Services Under General Assistance	140.4
140.5	Medical Services Not Covered	140.5
140.6	Medical Assistance Provided to Individuals Under the Age of Eighteen Who Do Not Qualify for AFDC and Children Under Age Eight	140.6
140.7	Medical Assistance For Qualified Severely Impaired Individuals	140.7
140.8	Medical Assistance for a Pregnant Woman Who Would Not Be Categorically Eligible for AFDC/AFDC-MANG if the Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy	140.8
140.9	Medical Assistance Provided to Incarcerated Persons	140.9
140.10		140.10

## SUBPART B: MEDICAL PROVIDER PARTICIPATION

140.11	Enrollment Conditions for Medical Providers	Section
140.12	Participation Requirements for Medical Providers	140.11
140.13	Definitions	140.12
140.14	Denial of Application to Participate in the Medical Assistance Program	140.13
140.15	Recovery of Money	140.14
140.16	Termination or Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program	140.15
140.17	Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program	140.16
140.18	Effect of Termination on Individuals Associated with Vendor	140.17
140.19	Application to Participate or for Reinstatement Subsequent to Termination, Suspension or Barring	140.18
140.20	Submission of Claims	140.19
140.21	Covered Medicaid Services for Qualified Medicare Beneficiaries (QMBs)	140.20
140.22	Magnetic Tape Billings	140.21
140.23	Payment of Claims	140.22
140.24	Payment Procedures	140.23
140.25	Overpayment or Underpayment of Claims	140.24
140.26	Payment to Factors Prohibited	140.25

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

140.27 Assignment of Vendor Payments  
 140.28 Record Requirements for Medical Providers  
 140.30 Audits  
 140.31 Emergency Services Audits  
 140.32 Prohibition on Participation, and Special Permission for Participation  
 140.33 Publication of List of Terminated, Suspended or Barred Entities  
 140.35 False Reporting and Other Fraudulent Activities  
 140.40 Prior Approval for Medical Services or Items  
 140.41 Prior Approval in Cases of Emergency  
 140.42 Limitation on Prior Approval  
 140.43 Post Approval for items or Services When Prior Approval Cannot Be Obtained  
 140.55 Recipient Eligibility Verification (REV) System  
 140.71 Reimbursement for Medical Services Through the Use of a C-13 Invoice  
 Voucher Advance Payment and Expedited Payments  
 140.72 Drug Manual (Recodified)  
 140.73 Drug Manual Updates (Recodified)

## SUBPART C: PROVIDER ASSESSMENTS

Section  
 140.80 Hospital Provider Fund  
 140.82 Developmentally Disabled Care Provider Fund  
 140.84 Long Term Care Provider Fund  
 140.94 Medicaid Developmentally Disabled Provider Participation Fee Trust  
 Fund/Medicaid Long Term Care Provider Participation Fee Trust Fund  
 140.95 Hospital Services Trust Fund  
 140.96 General Requirements (Recodified)  
 140.97 Special Requirements (Recodified)  
 140.98 Covered Hospital Services (Recodified)  
 140.99 Hospital Services Not Covered (Recodified)  
 140.100 Limitation On Hospital Services (Recodified)  
 140.101 Transplants (Recodified)  
 140.102 Heart Transplants (Recodified)  
 140.103 Liver Transplants (Recodified)  
 140.104 Bone Marrow Transplants (Recodified)  
 140.110 Disproportionate Share Hospital Adjustments (Recodified)  
 140.116 Payment for Inpatient Services for GA (Recodified)  
 140.117 Hospital Outpatient and Clinic Services (Recodified)  
 140.200 Payment for Hospital Services During Fiscal Year 1982 (Recodified)  
 140.201 Payment for Hospital Services After June 30, 1982 (Repealed)  
 140.202 Payment for Hospital Services During Fiscal Year 1983 (Recodified)  
 140.203 Limits on Length of Stay by Diagnosis (Recodified)  
 140.300 Payment for Pre-operative Days and Services Which Can Be Performed in an Outpatient Setting (Recodified)  
 Copayments (Recodified)  
 140.350 Payment Methodology (Recodified)  
 140.360

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

140.361 Non-Participating Hospitals (Recodified)  
 140.362 Pre July 1, 1989 Services (Recodified)  
 140.363 Post June 30, 1989 Services (Recodified)  
 140.364 Prepayment Review (Recodified)  
 140.365 Base Year Costs (Recodified)  
 140.366 Restructuring Adjustment (Recodified)  
 140.367 Inflation Adjustment (Recodified)  
 140.368 Volume Adjustment (Repealed)  
 140.369 Groupings (Recodified)  
 140.370 Rate Calculation (Recodified)  
 140.371 Payment (Recodified)  
 140.372 Review Procedure (Recodified)  
 140.373 Utilization (Repealed)  
 140.374 Alternatives (Recodified)  
 140.375 Exemptions (Recodified)  
 140.376 Utilization, Case-Mix and Discretionary Funds (Repealed)  
 140.390 Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.391 Definitions (Recodified)  
 140.392 Types of Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.394 Payment for Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.396 Rate Appeals for Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.398 Hearings (Recodified)

## SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

Section  
 140.400 Payment to Practitioners, Nurses and Laboratories  
 140.410 Physicians' Services  
 140.411 Covered Services By Physicians  
 140.412 Services Not Covered By Physicians  
 140.413 Limitation on Physician Services  
 140.414 Requirements for Prescriptions and Dispensing of Pharmacy Items - Physicians  
 140.416 Optometric Services and Materials  
 140.417 Limitations on Optometric Services  
 140.418 Department of Corrections Laboratory  
 140.420 Dental Services  
 140.421 Limitations on Dental Services  
 140.422 Requirements for Prescriptions and Dispensing Items of Pharmacy Items - Dentists  
 140.425 Podiatry Services  
 140.426 Limitations on Podiatry Services  
 140.427 Requirement for Prescriptions and Dispensing of Pharmacy Items - Podiatry  
 140.428 Chiropractic Services

DEPARTMENT OF PUBLIC AID  
NOTICE OF ADOPTED AMENDMENTS

140.429 Limitations on Chiropractic Services (Repealed)  
140.430 Independent Laboratory Services  
140.431 Services Not Covered by Independent Laboratory  
140.432 Limitations on Independent Laboratory Services  
140.433 Payment for Laboratory Services  
140.434 Record Requirements for Independent Laboratories  
140.435 Nurse Services  
140.436 Limitations on Nurse Services  
140.440 Pharmacy Services  
140.441 Pharmacy Services Not Covered  
140.442 Prior Approval of Prescriptions  
140.443 Filling of Prescriptions  
140.444 Compounded Prescriptions  
140.445 Legend Prescription Items (Not Compounded)  
140.446 Over-the-Counter Items  
140.447 Reimbursement  
140.448 Returned Pharmacy Items  
140.449 Payment of Pharmacy Items  
140.450 Record Requirements for Pharmacies  
140.452 Mental Health Clinic Services  
140.453 Definitions  
140.454 Types of Mental Health Clinic Services  
140.455 Payment for Mental Health Clinic Services  
140.456 Hearings  
140.457 Therapy Services  
140.458 Prior Approval for Therapy Services  
140.459 Payment for Therapy Services  
140.460 Clinic Services  
140.461 Clinic Participation, Data and Certification Requirements  
140.462 Covered Services in Clinics  
140.463 Clinic Service Payment  
140.464 Healthy Moms/Healthy Kids Managed Care Clinics (Repealed)  
140.465 Speech and Hearing Clinics (Repealed)  
140.466 Rural Health Clinics  
140.467 Independent Clinics  
140.469 Hospice  
140.470 Home Health Services  
140.471 Home Health Covered Services  
140.472 Types of Home Health Services  
140.473 Prior Approval for Home Health Services  
140.474 Payment for Home Health Services  
140.475 Medical Equipment, Supplies and Prosthetic Devices  
140.476 Medical Equipment, Supplies and Prosthetic Devices for Which Payment Will Not Be Made  
140.477 Limitations on Equipment, Supplies and Prosthetic Devices  
140.478 Prior Approval for Medical Equipment, Supplies and Prosthetic Devices  
140.479 Limitations, Medical Supplies  
140.480 Equipment Rental Limitations

SUBPART E: GROUP CARE

140.481 Payment for Medical Equipment, Supplies and Prosthetic Devices  
140.482 Family Planning Services  
140.483 Limitations on Family Planning Services  
140.484 Payment for Family Planning Services  
140.485 Healthy Kids Program  
140.486 Limitations on Medichuk Services (Repealed)  
140.487 Healthy Kids Program Timeliness Standards  
140.488 Periodicity Schedule, Immunizations and Diagnostic Laboratory Procedures  
140.490 Medical Transportation  
140.491 Limitations on Medical Transportation  
140.492 Payment for Medical Transportation  
140.493 Payment for Helicopter Transportation  
140.495 Psychological Services  
140.496 Payment for Psychological Services  
140.497 Hearing Aids

Section  
140.500 Long Term Care Services  
140.502 Cessation of Payment at Federal Direction  
140.503 Cessation of Payment for Improper Level of Care  
140.504 Cessation of Payment Because of Termination of Facility  
140.505 Continuation of Payment Because of Threat To Life (Repealed)  
140.506 Provider Voluntary Withdrawal  
140.507 Continuation of Provider Agreement  
140.510 Determination of Need for Group Care  
140.511 Long Term Care Services Covered by Department Payment  
140.512 Utilization Control  
140.513 Utilization Review Plan (Repealed)  
140.514 Certifications and Recertifications of Care  
140.515 Management of Recipient Funds--Personal Allowance Funds  
140.516 Recipient Management of Funds  
140.517 Correspondent Management of Funds  
140.518 Facility Management of Funds  
140.519 Use or Accumulation of Funds  
140.520 Management of Recipient Funds--Local Office Responsibility  
140.521 Room and Board Accounts  
140.522 Reconciliation of Recipient Funds  
140.523 Bed Reserves  
140.524 Cessation of Payment Due to Loss of License  
140.525 Quality Incentive Program (QUIP) Payment Levels  
140.526 Quality Incentive Standards and Criteria for the Quality Incentive Program (QUIP) (Repealed)  
140.527 Quality Incentive Survey (Repealed)  
140.528 Payment of Quality Incentive (Repealed)  
140.529 Reviews (Repealed)



## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

140.530	Basis of Payment for Long Term Care Services
140.531	General Service Costs
140.532	Health Care Costs
140.533	General Administration Costs
140.534	Ownership Costs
140.535	Costs for Interest, Taxes and Rent
140.536	Organization and Pre-Operating Costs
140.537	Payments to Related Organizations
140.538	Special Costs
140.539	Reimbursement for Basic Nursing Assistant, Developmental Disabilities Aide, Basic Child Care Aide and Habilitation Aide Training and Nursing Assistant Competency Evaluation
140.540	Costs Associated With Nursing Home Care Reform Act and Implementing Regulations
140.541	Salaries Paid to Owners or Related Parties
140.542	Cost Reports-Filing Requirements
140.543	Time Standards for Filing Cost Reports
140.544	Access to Cost Reports (Repealed)
140.545	Penalty for Failure to File Cost Reports
140.550	Update of Operating Costs
140.551	General Service Costs
140.552	Nursing and Program Costs
140.553	General Administrative Costs
140.554	Component Inflation Index
140.555	Minimum Wage
140.560	Components of the Base Rate Determination
140.561	Support Costs Components
140.562	Nursing Costs
140.563	Capital Costs
140.565	Kosher Kitchen Reimbursement
140.566	Out-of-State Placement
140.567	Level II Incentive Payments (Repealed)
140.568	Duration of Incentive Payments (Repealed)
140.569	Clients With Exceptional Care Needs
140.570	Capital Rate Component Determination
140.571	Capital Rate Calculation
140.572	Total Capital Rate
140.573	Other Capital Provisions
140.574	Capital Rates for Rented Facilities
140.575	Newly Constructed Facilities (Repealed)
140.576	Renovations (Repealed)
140.577	Capital Costs for Rented Facilities (Renumbered)
140.578	Property Taxes
140.579	Specialized Living Centers
140.580	Mandated Capital Improvements (Repealed)
140.581	Qualifying as Mandated Capital Improvement (Repealed)
140.582	Cost Adjustments
140.583	Campus Facilities

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

140.584	Illinois Municipal Retirement Fund (IMRF)
140.590	Audit and Record Requirements
140.642	Screening Assessment for Nursing Facility and Alternative Residential Settings and Services
140.643	In-Home Care Program
140.645	Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21
140.646	Reimbursement for Developmental Training (DT) Services for Individuals with Developmental Disabilities Who Reside in Long Term Care (ICF AND SNF) and Residential (ICF/MR) Facilities
140.647	Description of Developmental Training (DT) Services
140.648	Determination of the Amount of Reimbursement for Developmental Training (DT) Programs
140.649	Effective Dates of Reimbursement for Developmental Training (DT) Programs
140.650	Certification of Developmental Training (DT) Programs
140.651	Decertification of Day Programs
140.652	Terms of Assurances and Contracts
140.680	Effective Date Of Payment Rate
140.700	Discharge of Long Term Care Residents
140.830	Appeals of Rate Determinations
140.835	Determination of Cap on Payments for Long Term Care (Repealed)
SUBPART F: MEDICAID PARTNERSHIP PROGRAM	
Section	
140.850	General Description (Repealed)
140.855	Definition of Terms (Repealed)
140.860	Covered Services (Repealed)
140.865	Sponsor Qualifications (Repealed)
140.870	Sponsor Responsibilities (Repealed)
140.875	Department Responsibilities (Repealed)
140.880	Provider Qualifications (Repealed)
140.885	Provider Responsibilities (Repealed)
140.890	Payment Methodology (Repealed)
140.895	Contract Monitoring (Repealed)
140.896	Reimbursement For Program Costs (Active Treatment) For Clients In Long Term Care Facilities For the Developmentally Disabled (Recodified)
SUBPART G: MATERNAL AND CHILD HEALTH PROGRAM	
Section	
140.900	Reimbursement For Nursing Costs For Geriatric Residents in Group Care Facilities (Recodified)
140.901	Functional Areas of Needs (Recodified)
140.902	Service Needs (Recodified)
140.903	Definitions (Recodified)

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

140.904	Times and Staff Levels (Repealed)
140.905	Statewide Rates (Repealed)
140.906	Reconsiderations (Recodified)
140.907	Midnight Census Report (Recodified)
140.908	Times and Staff Levels (Recodified)
140.909	Statewide Rates (Recodified)
140.910	Referrals (Recodified)
140.911	Basic Rehabilitation Aide Training Program (Recodified)
140.912	Interim Nursing Rates (Recodified)
140.920	General Description
140.922	Covered Services
140.924	Maternal and Child Health Provider Participation Requirements
140.926	Client Eligibility (Repealed)
140.928	Client Enrollment and Program Components (Repealed)
140.930	Reimbursement
140.932	Payment Authorization for Referrals (Repealed)

SUBPART H: ILLINOIS COMPETITIVE ACCESS AND REIMBURSEMENT  
EQUITY (ICARE) PROGRAM

Section	Illinois Competitive Access and Reimbursement Equity (ICARE) Program
140.940	(Recodified)
140.942	Definition of Terms (Recodified)
140.944	Notification of Negotiations (Recodified)
140.946	Hospital Participation in ICARE Program Negotiations (Recodified)
140.948	Negotiation Procedures (Recodified)
140.950	Factors Considered in Awarding ICARE Contracts (Recodified)
140.952	Closing an ICARE Area (Recodified)
140.954	Administrative Review (Recodified)
140.956	Payments to Contracting Hospitals (Recodified)
140.958	Admitting and Clinical Privileges (Recodified)
140.960	Inpatient Hospital Care or Services by Non-Contracting Hospitals
	Eligible for Payment (Recodified)
140.962	Payment to Hospitals for Inpatient Services or Care not Provided
	under the ICARE Program (Recodified)
140.964	Contract Monitoring (Recodified)
140.966	Transfer of Recipients (Recodified)
140.968	Validity of Contracts (Recodified)
140.970	Termination of ICARE Contracts (Recodified)
140.972	Hospital Services Procurement Advisory Board (Recodified)
TABLE A	Medicheck Recommended Screening Procedures (Repealed)
TABLE B	Health Service Areas
TABLE C	Capital Cost Areas
TABLE D	Schedule of Dental Procedures
TABLE E	Time Limits for Processing of Prior Approval Requests
TABLE F	Podiatry Service Schedule

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

TABLE G	Travel Distance Standards
TABLE H	Areas of Major Life Activity
TABLE I	Staff Time and Allocation for Training Programs (Recodified)
TABLE J	HSA Grouping (Repealed)
TABLE K	Services Qualifying for 10% Add-On (Repealed)
TABLE L	Services Qualifying for 10% Add-On to Surgical Incentive Add-On (Repealed)
TABLE M	Enhanced Rates for Maternal and Child Health Provider Services

AUTHORITY: Implementing Article III of the Illinois Health Finance Reform Act [20 ILCS 2215/Art. III] and implementing and authorized by Articles III, IV, V, VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Adopted at 3 Ill. Reg. 24, p. 166, effective June 10, 1979; rule repealed and new rule adopted at 6 Ill. Reg. 8374, effective July 6, 1982; emergency amendment at 6 Ill. Reg. 8508, effective July 6, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 681, effective December 30, 1982; amended at 7 Ill. Reg. 7956, effective July 1, 1983; amended at 7 Ill. Reg. 8308, effective July 1, 1983; amended at 7 Ill. Reg. 8271, effective July 5, 1983; emergency amendment at 7 Ill. Reg. 8354, effective July 5, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 8540, effective July 15, 1983; amended at 7 Ill. Reg. 9382, effective July 22, 1983; amended at 7 Ill. Reg. 15047, effective September 20, 1983; peremptory amendment at 7 Ill. Reg. 17358, effective December 21, 1983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill. Reg. 580, effective January 1, 1984, for a maximum of 150 days; codified at 8 Ill. Reg. 2483; amended at 8 Ill. Reg. 3012, effective February 22, 1984; amended at 8 Ill. Reg. 5262, effective April 9, 1984; amended at 8 Ill. Reg. 6785, effective April 27, 1984; amended at 8 Ill. Reg. 6983, effective May 9, 1984; amended at 8 Ill. Reg. 7258, effective May 16, 1984; emergency amendment at 8 Ill. Reg. 7910, effective May 22, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7910, effective June 1, 1984; amended at 8 Ill. Reg. 10032, effective June 18, 1984; emergency amendment at 8 Ill. Reg. 10062, effective June 20, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 13343, effective July 17, 1984; amended at 8 Ill. Reg. 13779, effective July 24, 1984; Sections 140.72 and 140.73 recodified to 89 Ill. Adm. Code 141 at 8 Ill. Reg. 16354; amended (by adding sections being codified with no substantive change) at 8 Ill. Reg. 17899; peremptory amendment at 8 Ill. Reg. 18151, effective September 18, 1984; amended at 8 Ill. Reg. 21629, effective October 19, 1984; peremptory amendment at 8 Ill. Reg. 21677, effective October 24, 1984; amended at 8 Ill. Reg. 22097, effective October 24, 1984; peremptory amendment at 8 Ill. Reg. 22155, effective October 29, 1984; amended at 8 Ill. Reg. 23218, effective November 20, 1984; emergency amendment at 8 Ill. Reg. 23721, effective November 21, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 25067, effective December 19, 1984; emergency amendment at 9 Ill. Reg. 407, effective January 1, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 2697, effective February 22, 1985; amended at 9 Ill.



## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

Reg. 6235, effective April 19, 1985; amended at 9 Ill. Reg. 8677, effective May 28, 1985; amended at 9 Ill. Reg. 9564, effective June 5, 1985; amended at 9 Ill. Reg. 10025, effective June 26, 1985; emergency amendment at 9 Ill. Reg. 11403, effective June 27, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11357, effective June 28, 1985; amended at 9 Ill. Reg. 12000, effective July 24, 1985; amended at 9 Ill. Reg. 12306, effective August 5, 1985; amended at 9 Ill. Reg. 13998, effective September 3, 1985; amended at 9 Ill. Reg. 14684, effective September 13, 1985; amended at 9 Ill. Reg. 15503, effective October 4, 1985; amended at 9 Ill. Reg. 16312, effective October 11, 1985; amended at 9 Ill. Reg. 19138, effective December 2, 1985; amended at 9 Ill. Reg. 19737, effective December 9, 1985; amended at 10 Ill. Reg. 238, effective December 27, 1985; emergency amendment at 10 Ill. Reg. 798, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 672, effective January 6, 1986; amended at 10 Ill. Reg. 1206, effective January 13, 1986; amended at 10 Ill. Reg. 3041, effective January 24, 1986; amended at 10 Ill. Reg. 6981, effective April 16, 1986; amended at 10 Ill. Reg. 7825, effective April 30, 1986; amended at 10 Ill. Reg. 8128, effective May 7, 1986; emergency amendment at 10 Ill. Reg. 8912, effective May 13, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 11440, effective June 20, 1986; amended at 10 Ill. Reg. 14714, effective August 27, 1986; amended at 10 Ill. Reg. 15211, effective September 12, 1986; emergency amendment at 10 Ill. Reg. 16729, effective September 18, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 18808, effective October 24, 1986; amended at 10 Ill. Reg. 19742, effective November 12, 1986; amended at 10 Ill. Reg. 21784, effective December 15, 1986; amended at 11 Ill. Reg. 698, effective December 19, 1986; amended at 11 Ill. Reg. 1418, effective December 31, 1986; amended at 11 Ill. Reg. 2323, effective January 16, 1987; amended at 11 Ill. Reg. 4002, effective February 25, 1987; Section 140.71 recodified to 89 Ill. Adm. Code 141 at 11 Ill. Reg. 4302; amended at 11 Ill. Reg. 4303, effective March 6, 1987; amended at 11 Ill. Reg. 7664, effective April 15, 1987; emergency amendment at 11 Ill. Reg. 9342, effective April 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9169, effective April 28, 1987; amended at 11 Ill. Reg. 10903, effective June 1, 1987; amended at 11 Ill. Reg. 11528, effective June 22, 1987; amended at 11 Ill. Reg. 12011, effective June 30, 1987; amended at 11 Ill. Reg. 12290, effective July 6, 1987; amended at 11 Ill. Reg. 14048, effective August 14, 1987; amended at 11 Ill. Reg. 14771, effective August 25, 1987; amended at 11 Ill. Reg. 16758, effective September 28, 1987; amended at 11 Ill. Reg. 17295, effective September 30, 1987; amended at 11 Ill. Reg. 18696, effective October 27, 1987; amended at 11 Ill. Reg. 20909, effective December 14, 1987; amended at 12 Ill. Reg. 916, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1960, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 5427, effective March 15, 1988; amended at 12 Ill. Reg. 6246, effective March 16, 1988; amended at 12 Ill. Reg. 6728, effective March 22, 1988; Sections 140.900 thru 140.912 and 140.913 thru 140.914 Table I recodified to 89 Ill. Adm. Code 147.5 thru 147.205 and 147.206 and 147.207 Table B at 12 Ill. Reg. 6956; amended at 12 Ill. Reg. 6927, effective April 5, 1988; Sections 140.940 thru 140.972 recodified to 89 Ill. Adm. Code 149.5 thru 149.325 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 7695, effective April 21, 1988; amended

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

at 12 Ill. Reg. 10497, effective June 3, 1988; amended at 12 Ill. Reg. 10717, effective June 14, 1988; emergency amendment at 12 Ill. Reg. 11868, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12509, effective July 15, 1988; amended at 12 Ill. Reg. 14271, effective August 29, 1988; emergency amendment at 12 Ill. Reg. 16921, effective September 28, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16738, effective October 5, 1988; amended at 12 Ill. Reg. 17879, effective October 24, 1988; amended at 12 Ill. Reg. 18198, effective November 4, 1988; amended at 12 Ill. Reg. 19396, effective November 6, 1988; amended at 12 Ill. Reg. 19734, effective November 15, 1988; amended at 13 Ill. Reg. 125, effective January 1, 1989; amended at 13 Ill. Reg. 2475, effective February 14, 1989; amended at 13 Ill. Reg. 3069, effective February 28, 1989; amended at 13 Ill. Reg. 3351, effective March 6, 1989; amended at 13 Ill. Reg. 3917, effective March 17, 1989; amended at 13 Ill. Reg. 5115, effective April 3, 1989; amended at 13 Ill. Reg. 5718, effective April 10, 1989; amended at 13 Ill. Reg. 7025, effective April 24, 1989; Sections 140.850 thru 140.896 recodified to 89 Ill. Adm. Code 146.5 thru 146.225 at 13 Ill. Reg. 7040; amended at 13 Ill. Reg. 7786, effective May 20, 1989; Sections 140.94 thru 140.398 recodified to 89 Ill. Adm. Code 148.10 thru 148.390 at 13 Ill. Reg. 9572; emergency amendment at 13 Ill. Reg. 10977, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 11516, effective July 3, 1989; amended at 13 Ill. Reg. 12119, effective July 7, 1989; Section 140.110 recodified to 89 Ill. Adm. Code 148.120 at 13 Ill. Reg. 12118; amended at 13 Ill. Reg. 12562, effective July 17, 1989; amended at 13 Ill. Reg. 14391, effective August 31, 1989; emergency amendment at 13 Ill. Reg. 15473, effective September 12, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 16992, effective October 16, 1989; amended at 14 Ill. Reg. 190, effective December 21, 1989; amended at 14 Ill. Reg. 2564, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 3241, effective February 14, 1990, for a maximum of 150 days; emergency expired July 14, 1990; amended at 14 Ill. Reg. 4543, effective March 12, 1990; emergency amendment at 14 Ill. Reg. 4577, effective March 6, 1990, for a maximum of 150 days; emergency expired August 3, 1990; emergency amendment at 14 Ill. Reg. 5575, effective April 1, 1990, for a maximum of 150 days; emergency expired August 29, 1990; emergency amendment at 14 Ill. Reg. 5865, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 7141, effective April 27, 1990; emergency amendment at 14 Ill. Reg. 7249, effective April 27, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 10062, effective June 12, 1990; amended at 14 Ill. Reg. 10409, effective June 19, 1990; emergency amendment at 14 Ill. Reg. 12082, effective July 5, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13262, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 14184, effective August 16, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 14570, effective August 22, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14826, effective August 31, 1990; amended at 14 Ill. Reg. 15366, effective September 12, 1990; amended at 14 Ill. Reg. 15981, effective September 21, 1990; amended at 14 Ill. Reg. 17279, effective October 12, 1990; amended at 14 Ill. Reg. 18057, effective October 22, 1990; amended at 14 Ill. Reg. 18508, effective October 30, 1990; amended at 14 Ill. Reg. 18813, effective November 6, 1990;



## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

amended at 14 Ill. Reg. 20478, effective December 7, 1990; amended at 14 Ill. Reg. 20729, effective December 12, 1990; amended at 15 Ill. Reg. 298, effective December 28, 1990; emergency amendment at 15 Ill. Reg. 592, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 1051, effective January 18, 1991; Section 140.569 withdrawn at 15 Ill. Reg. 1174; amended at 15 Ill. Reg. 6220, effective April 18, 1991; amended at 15 Ill. Reg. 6534, effective April 30, 1991; amended at 15 Ill. Reg. 8264, effective May 23, 1991; amended at 15 Ill. Reg. 8972, effective June 17, 1991; amended at 15 Ill. Reg. 10114, effective June 21, 1991; amended at 15 Ill. Reg. 10468, effective July 1, 1991; amended at 15 Ill. Reg. 11176, effective August 1, 1991; emergency amendment at 15 Ill. Reg. 11515, effective July 25, 1991, for a maximum of 150 days; emergency expired December 22, 1991; emergency amendment at 15 Ill. Reg. 12919, effective August 15, 1991, for a maximum of 150 days; emergency expired December 12, 1992; emergency amendment at 15 Ill. Reg. 16366, effective October 22, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17318, effective November 18, 1991; amended at 15 Ill. Reg. 17733, effective November 22, 1991; emergency amendment at 16 Ill. Reg. 300, effective December 20, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 174, effective December 24, 1991; amended at 16 Ill. Reg. 1877, effective January 24, 1992; amended at 16 Ill. Reg. 3552, effective February 28, 1992; amended at 16 Ill. Reg. 4006, effective March 6, 1992; amended at 16 Ill. Reg. 6408, effective March 20, 1992; amended at 16 Ill. Reg. 6849, effective April 7, 1992; amended at 16 Ill. Reg. 7017, effective April 17, 1992; amended at 16 Ill. Reg. 10050, effective June 5, 1992; amended at 16 Ill. Reg. 11174, effective June 26, 1992; expedited correction at 16 Ill. Reg. 11348, effective March 20, 1992; emergency amendment at 16 Ill. Reg. 11947, effective July 10, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 12186, effective July 24, 1992; emergency amendment at 16 Ill. Reg. 13337, effective August 14, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 15109, effective September 21, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 15561, effective September 30, 1992; amended at 16 Ill. Reg. 17302, effective November 2, 1992; emergency amendment at 16 Ill. Reg. 18097, effective November 17, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19146, effective December 1, 1992; amended at 16 Ill. Reg. 19879, effective December 7, 1992; amended at 17 Ill. Reg. 837, effective January 11, 1993; amended at 17 Ill. Reg. 1112, effective January 15, 1993; amended at 17 Ill. Reg. 2290, effective February 15, 1993; amended at 17 Ill. Reg. 2951, effective February 17, 1993; amended at 17 Ill. Reg. 3421, effective February 19, 1993; amended at 17 Ill. Reg. 6196, effective April 5, 1993; amended at 17 Ill. Reg. 6839, effective April 21, 1993; amended at 17 Ill. Reg. 7004, effective May 17, 1993; expedited correction at 17 Ill. Reg. 7078, effective December 1, 1992; emergency amendment at 17 Ill. Reg. 11201, effective July 1, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 15162, effective September 2, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 18152, effective October 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 18571, effective October 8, 1993; emergency amendment at 17 Ill. Reg. 18611, effective October 1, 1993, for a maximum of 150 days; emergency amendment suspended effective October 12, 1993; amended at 17 Ill. Reg. 20999, effective November 24, 1993; emergency amendment

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

repealed at 17 Ill. Reg. 22583, effective December 20, 1993; amended at 18 Ill. Reg. 3620, effective February 28, 1994; amended at 18 Ill. Reg. 4250, effective March 4, 1994; amended at 18 Ill. Reg. 5951, effective April 1, 1994; emergency amendment at 18 Ill. Reg. 10922, effective July 1, 1994, for a maximum of 150 days; emergency amendment suspended, effective November 15, 1994; emergency amendment repealed at 19 Ill. Reg. 5839, effective April 4, 1995; amended at 18 Ill. Reg. 11244, effective July 1, 1994; amended at 18 Ill. Reg. 14126, effective August 29, 1994; amended at 18 Ill. Reg. 16675, effective November 1, 1994; amended at 18 Ill. Reg. 18059, effective December 19, 1994; amended at 19 Ill. Reg. 1082, effective January 20, 1995; amended at 19 Ill. Reg. 2933, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 3529, effective March 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 5663, effective April 1, 1995; amended at 19 Ill. Reg. 7919, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 8455, effective June 9, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 9297, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 10252, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13019, effective September 5, 1995; amended at 19 Ill. Reg. 14440, effective September 29, 1995; emergency amendment at 19 Ill. Reg. 14833, effective October 6, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15441, effective October 26, 1995; amended at 19 Ill. Reg. 15692, effective November 6, 1995; amended at 19 Ill. Reg. 16677, effective November 28, 1995; amended at 19 Ill. Reg. 1210, effective December 29, 1995; amended at 20 Ill. Reg. 4345, effective March 4, 1996; amended at 20 Ill. 5858, effective April 5, 1996; amended at 20 Ill. Reg. 6929, effective May 6, 1996; amended at 20 Ill. Reg. 7922, effective May 31, 1996; amended at 20 Ill. Reg. 9081, effective June 28, 1996; emergency amendment at 20 Ill. Reg. 9312, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 11332, effective August 1, 1996; amended at 20 Ill. Reg. 14845, effective October 31, 1996; emergency amendment at 21 Ill. Reg. 705, effective December 31, 1996, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 3734, effective March 5, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4777, effective April 2, 1997; amended at 21 Ill. Reg. 6899, effective MAY 2, 1997.

## SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

## Section 140.463 Clinic Service Payment

## a) Hospital-Based Organized Clinics

- 1) With respect to those hospital-based organized clinics that qualify as Maternal and Child Health clinics, as described in Section 140.461(f)(1), payment shall be in accordance with Section 140.930.
- 2) With respect to all other hospital-based organized clinics, payment shall be in accordance with 89 Ill. Adm. Code 148.140.

## b) Encounter Rate Clinic. Payment shall be made at the lesser of:

- 1) The clinic's approved all inclusive interim per encounter rate as of May 1, 1981; or

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

- 2) \$50.00 per encounter; or  
 3) the clinic charge to the general public.

## c) Federally Qualified Health Centers (FQHC)

## 1) Medical Encounter Rate

A) Payment for services rendered after March 31, 1990, shall be made at an individual, all inclusive, prospective per diem rate calculated on the basis of the Department's encounter rate methodology and audited provider fiscal information reported on the Medicaid Freestanding Federally-Funded Health Center Worksheet (Health Care Financing Administration Form 242), as supplemented by FQHC Medicaid Supplemental Schedules A, B and C reflecting the actual costs of delivering encounter services as listed in Section 140.462(d)(12).

B) All cost reports will be audited by the Department to determine allowable costs for rate setting. The provider will be advised of any adjustments resulting from these audits.

C) New rates effective each July 1 will be based on certified cost information from the provider's most recently audited fiscal year.

D) Allowable costs will be updated to the midpoint of the rate year by an inflation factor derived from published economic indices.

E) Interim payment for covered services rendered by FQHCs enrolled as of March 31, 1990, for which no audited costs are available shall be made at the individual FQHC rate in effect on March 31, 1990, as established by the Department.

F) Interim payment for covered services rendered by FQHCs enrolled between March 31, 1990 and January 1, 1991, shall be made at the higher of:

i) the provider's approved Medicare rate established by the designated federal intermediary for Rural Health Center or Federally Funded Health Center Services; or

ii) the 75th percentile of the statewide range of the Department's established encounter clinic rates (as defined in subsection (a) above) as of March 31, 1990.

G) Payment shall be made at the interim rate to FQHCs enrolled before January 1, 1991, for covered services rendered from the later of the date of enrollment or April 1, 1990, until the certified date of provider receipt of the cost-based rate established by the Department for that provider.

H) When an individual cost-based rate has been established by the Department in accordance with the method described in subsection (c)(1)(A) above, the Department shall reconcile interim payments made for covered services.

i) Rate retroactivity from April 1, 1990, will only apply to clinics enrolled as of March 31, 1990, which submit

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

an application to the Public Health Service for Federally Qualified Health Center status by November 1, 1990, and are subsequently designated as federally qualified.

ii) If the cost-based rate is higher than the interim rate, the Department shall pay the provider the rate differential for each claim paid at the interim rate.

iii) If the cost-based rate is lower than the interim rate, the provider shall refund to the Department the rate differential for each claim paid at the interim rate, either by direct payment to the Department or as a credit applied against future service claims.

I) Interim payment for covered services rendered by FQHCs enrolled on or after January 1, 1991, shall be made at the higher of:

i) the provider's approved Medicare rate established by the designated federal intermediary for Rural Health Centers and Federally Funded Health Centers Services; or

ii) the median of the statewide range of the Department's established cost-based FQHC rates in effect at the time of enrollment.

J) Payment shall be made at the interim rate for Centers enrolled on or after January 1, 1991, for covered services rendered between the date of enrollment and 30 days after the date of Department receipt of the complete and correct cost report of the provider. Payment for covered medical services rendered by the provider 30 days after Department receipt of the provider's complete and correct cost report will be made at the rate determined on the basis of the submitted cost report and the Department's FQHC rate methodology.

K) If the FQHC has not submitted the required audited fiscal information on the forms specified in subsection (c)(1)(A) of this Section within 90 days of the certified date of receipt of the forms, the Department shall suspend payment for covered medical services until the required information is received by the Department, unless the enrolled Center has been in operation less than one year and has no audited cost history.

L) Enrolled FQHCs which have been in operation less than one year and have no audited cost history must submit required audited fiscal information reflecting the first six months of operation on the forms specified in subsection (c)(1)(A) of this Section, within 90 days after the later of the end of the sixth month of operation or the certified mail date of receipt of the forms. The rate calculated from these costs will be in effect for services rendered on and after



## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

the first day of the month following the month of receipt of the required fiscal information by the Department.

- M) The Department will not process a claim for payment of FOHC services rendered after June 30, 1990, that does not indicate all individual medical services delivered during the encounter, by procedure code.

2) Dental Encounter Rate

- A) Payment for dental services rendered after March 31, 1990, shall be made at an individual, all inclusive, prospective per diem rate calculated on the basis of the Department's encounter rate methodology and audited provider fiscal information reported on the Medicaid Freestanding Federally-Funded Health Center Worksheet (Health Care Financing Administration Form 242), as supplemented by FOHC Medicaid supplemental Schedules A, B, and C reflecting the actual costs of delivering dental services.

- B) Direct costs related to operation of the clinic in order to provide allowable dental services will be reported on the cost report and used in the rate calculation process.

- C) All cost reports will be audited by the Department to determine allowable costs for rate setting. The provider will be advised of any adjustments resulting from these audits.

- D) New rates effective each July 1 will be based on certified cost information from the provider's most recently audited fiscal year.

- E) Allowable costs will be updated to the mid point of the rate year by an inflation factor derived from published economic indices.

- F) Payment for covered dental services shall be made by the Department's prepaid dental service contractor.

- G) When an individual cost-based rate has been established by the Department in accordance with the method described in subsection (c)(2)(A) above, the Department's prepaid dental service contractor shall reconcile interim payments made for covered dental services.

- i) Rate retroactivity will only apply to clinics enrolled as of March 31, 1990 which submit an application to the Public Health Service for Federally Qualified Health Center status by November 1, 1990, and are subsequently designated as federally qualified.

- ii) If the cost-based rate is higher than the interim rate, the Department's prepaid dental service contractor shall pay the provider the rate differential for each claim paid at the interim rate.

- iii) If the cost-based rate is lower than the interim rate, the provider shall refund to the Department the rate differential for each claim paid at the interim rate.

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

- H) Interim payment for covered dental services rendered by FOHCs enrolled on or after January 1, 1991 shall be made at the median of the statewide range of the Department's established cost-based FOHC dental rates in effect at the time of enrollment.

- I) Payment shall be made at the interim rate for Centers enrolled on or after January 1, 1991, for covered dental services rendered between the date of enrollment and 30 days after the date of the Department receipt of the complete and correct cost report of the provider. Payment for covered dental services rendered by the provider after 30 days of Department receipt of the provider's complete and correct cost report will be made at the rate determined on the basis of the submitted cost report and the Department's FOHC rate.

- J) If the FOHC has not submitted the required audited fiscal information on the forms specified in subsection (c)(2)(A) above within 90 days of the certified mail date of receipt of the forms, the Department's prepaid dental service contractor shall suspend payment for covered dental services until the required information is received by the Department, unless the enrolled Center has been in operation less than one year and has no audited cost history.

- K) Enrolled FOHCs which have been in operation less than one year and have no audited cost history must submit required audited fiscal information reflecting the first six months of operation on the forms specified in subsection (c)(2)(A) within 90 days after the later of the end of the sixth month of operation or the certified date of receipt of the forms. The rate calculated from these costs will be in effect for dental services rendered on and after the first day of the month following the month of receipt of the required fiscal information by the Department.

3) Rate Appeals Process

- A) All appeals of audit adjustments or rate determinations must be submitted in writing to the Department. Appeals submitted within 30 calendar days of the rate notification, if upheld, shall be made effective as of the beginning of the rate year. The effective date of all other upheld appeals shall be the first day of the month following the date the completed appeal was submitted. Appeals for any rate year must be filed before the close of the rate year.

- To be accepted for review, the written appeal shall include:

- i) The current approved reimbursement rate, allowable costs, and the additional reimbursable costs sought through the appeal;

- ii) A clear, concise statement of the basis for the appeal;

- iii) A detailed statement of financial, statistical, and



## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

related information in support of the appeal, indicating the relationship between the additional reimbursable costs as submitted and the circumstances creating the need for increased reimbursement;

- iv) A citation to any mandated or contractual requirement pertinent to the appeal; and
- v) A statement by the provider's chief executive officer or financial officer that the application of the rate appeal and information contained in the vendor's reports, schedules, budgets, books, and records submitted are true and accurate.

## C) Rate appeals may be considered for the following reasons:

- i) Mechanical or clerical errors committed by the provider in reporting historical expenses used in the calculation of allowable costs.
- ii) Mechanical or clerical errors committed by the Department in auditing historical expenses as reported and/or in calculating reimbursement rates.
- iii) The Department and the provider have entered into a written agreement to amend, alter, or modify substantive programmatic or management procedures attendant to the delivery of services, which have a substantial impact upon the costs of service delivery.
- iv) Substantial treatment service charges are required as a result of mandated regulatory charges.
- v) Substantial changes in the physical plant are required as a result of mandated licensure requirements. In such instances, the provider must submit a plan of corrections for capital improvements approved by the licensing authority, along with the required cost information.

- vi) State and/or Federal regulatory requirements have generated a substantial increase in allowable costs.

## D) The Department shall rule on all appeals within 120 calendar days of receipt of the appeal except that, if additional information is required from the facility, the period shall be extended until such time as the information is provided.

- E) Appeals shall be submitted to the Department's Bureau of Comprehensive Health Services, 3rd floor Bloom Building, 201 South Grand Avenue East, Springfield, Illinois 62763.

## d) Maternal and Child Health Clinics. Payment shall be made in accordance with Section 140.930.

- e) Transitional Payments for FQHCs and Certain Encounter Rate Clinics
  - 1) Certain clinics will be eligible to receive monthly transitional payments for managing the health care needs of certain clients under their care beginning December 1996. Certain clinics will be eligible to receive transitional payments for the month of December 1996, and monthly thereafter, under the conditions

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

described in this subsection. To receive monthly transitional payments, clinics must:

- A) be either:

- i) a Federally Qualified Health Center, as defined in Section 140.462(d), or

- ii) an Encounter Rate Clinic, as defined in Section 140.462(b), that has provided comprehensive health services to Medicaid clients prior to December 1996;

- B) have a signed transitional payment contract with the Department; and

- C) have a contract with a Health Maintenance Organization (HMO) or Prepaid Health Plan (PHP) that has a contract to provide comprehensive health services, or, upon the implementation of MediPlan Plus, have a contract with a Managed Care Entity (MCE). When MediPlan Plus is implemented, HMOs, PHPs or Managed Care Community Networks (MCCNs) may serve as MCEs (see 89 Ill. Adm. Code 142.110 for definition of terms).

- 2) Transitional payments to a clinic will consist of a per member per month payment for any Illinois Medicaid client enrolled with an HMO or PHP or, upon the implementation of MediPlan Plus, an MCE, for whom the clinic was their assigned care provider on the last day of the month.

- 3) For the first six months covered under a transitional payment contract, the Department will make transitional payments for any number of Medicaid clients enrolled with an HMO, PHP or MCCN and assigned to the qualifying clinic as their primary care site. Thereafter, qualified clinics will receive transitional payments for a given month only if the total number of Medicaid clients enrolled with an HMO, PHP or MCCN and assigned to the qualifying clinic, meets or exceeds the following threshold levels established in the qualifying clinic's transitional payment contract for that month:

- A) For the seventh through twelfth month, such threshold shall equal 20 percent of the qualifying clinic's Medicaid patient base;

- B) For the thirteenth through eighteenth month, such threshold shall equal 30 percent of the qualifying clinic's Medicaid patient base;

- C) For the nineteenth through twenty-fourth month, such threshold shall equal 40 percent of the qualifying clinic's Medicaid patient base;

- D) For the twenty-fifth month through the term of the contract, such threshold shall equal 50 percent of the qualifying clinic's Medicaid patient base.

- 4) The Medicaid patient base shall be a number mutually agreed to by the Department and the qualifying clinic and established in the transitional payment contract that equals the number of Medicaid clients registered as patients of the qualifying clinic as of

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

November 1996. If the qualifying clinic did not have Medicaid clients registered as patients as of November 1996, the mutually agreed to Medicaid patient base shall be the number of Medicaid clients registered as patients of the qualifying clinic as of the sixth month the qualifying clinic receives transitional payments under this Section.

## 5) Transitional payments shall equal:

- A) eight dollars per member per month for the first 12-month period of the clinic's effective date of a contract with the Department;
- B) six dollars per member per month for the second 12-month period of the clinic's effective date of a contract with the Department;
- C) two dollars per member per month for the third 12-month period of the clinic's effective date of a contract with the Department.

## 6) Total transitional payments under subsection (e) shall not exceed:

- A) \$2,625,000 through June 30, 1997;
- B) \$4,500,000 for each 12-month period thereafter that begins on July 1 and ends on June 30 of the following year.

## 7) In the event that payments exceed the limits described in subsection (e)(6) above, the Department will adjust future payments to clinics to recover any excess payment.

## 8) No clinic qualifying under subsection (e) shall receive transitional payments beyond the earlier of:

- A) three years from the effective date of a clinic's signed contract, or
- B) June 30, 2000.

(Source: Amended at 21 Ill. Reg. 6899, effective May 2, 1997)

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Property Tax Code2) Code Citation: 86 Ill. Adm. Code 1103) Section Numbers: Adopted Action:  
110.192 New Section4) Statutory Authority: 35 ILCS 2005) Effective Date of Amendments: May 22, 19976) Does this rulemaking contain an automatic repeal date: No7) Does this amendment contain incorporations by reference? No8) Date File in Agency's Principal Office: May 22, 19979) Notice of Proposal Published in Illinois Register: December 6, 1996, 20 Ill. Reg. 1559610) Has JCAR issued a Statement of Objections to these Amendments? No11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? N/A13) Will this amendment replace an emergency amendment currently in effect? No14) Are there any amendments pending on this Part? No15) Summary and Purpose of Amendment(s): This rulemaking provides guidance to county clerks in notifying the Department of the results on referenda regarding the applicability of PTEL.16) Information and questions regarding this adopted amendment shall be directed to:

Jerry Lanter  
Senior Counsel - Property Tax  
Legal Services Office  
Illinois Department of Revenue  
101 West Jefferson  
Springfield, IL 62794  
(217) 782-6996

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

The full text of the Adopted Amendment begins on the next page:

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 110  
PROPERTY TAX CODE

## Section

110.101  
Railroads

110.105 Non-carrier Real Estate of Railroads  
110.110 Procedures for Assessment of Pollution Control Facilities and Low Sulphur Dioxide Emission Coal Fueled Devices

110.115 Exemption Proceedings

110.120 Oil Right Lessees and Producers

110.125 Reports to be Filed with the Department

110.130 Hearings and Records of County Assessor, Supervisor of Assessments or Board of Assessors

110.135 Review of Assessments - Counties of 1,000,000 or More

110.140 Board of Review Procedures and Records - Counties of Less than 1,000,000

110.141 Farmland Factor Review Procedures (Repealed)

110.145 Practice and Procedure

110.150 Records Reproduction

110.155 Appointment of Board of Review Members After Examination

110.160 Multi-township Assessment Districts

110.162 Township and Multi-township Assessor Qualifications

110.165 Farmland Assessment Review Procedures

110.170 Assessors' Bonus

110.175 Equalization by Supervisor of Assessments

110.180 Supervisor of Assessments Examination

110.190 Property Tax Extension Limitation

110.192 Property Tax Extension Limitation Law Notification and Determination Requirements After Referendum Under Section 18-213 or 18-214 of the Property Tax Code

**AUTHORITY:** Implementing the Property Tax Code [35 ILCS 200] and authorized by Section 39b35 of the Civil Administrative Code of Illinois [20 ILCS 2505/39b35].

**SOURCE:** Adopted June 1, 1940; amended at 5 Ill. Reg. 2999, effective March 11, 1981; amended at 5 Ill. Reg. 5888, effective May 26, 1981; amended at 6 Ill. Reg. 9707, effective July 27, 1982; amended at 6 Ill. Reg. 14564, effective November 5, 1982; codified at 7 Ill. Reg. 5886; amended at 8 Ill. Reg. 24285, effective December 5, 1984; amended at 9 Ill. Reg. 159, effective December 26, 1984; amended at 9 Ill. Reg. 12022, effective July 24, 1985; amended at 10 Ill. Reg. 11284, effective June 16, 1986; amended at 10 Ill. Reg. 15125, effective September 2, 1986; amended at 11 Ill. Reg. 19675, effective November 23, 1987; amended at 11 Ill. Reg. 20972, effective December 11, 1987; amended at 12 Ill. Reg. 14346, effective August 29, 1988; amended at 13 Ill. Reg. 6803, effective



DEPARTMENT OF REVENUE  
NOTICE OF ADOPTED AMENDMENTS

assessed valuation for the immediately preceding levy year in this county in which the referendum was held, (2) the name and address of the governing authority of each such district, and (3) a list of all counties in which any portion of the equalized assessed valuation of each such district is situated:

(Name of non-home rule multi-county taxing district) (Name, address of governing authority of the district) (Counties in which any EAV of the district is situated)  
(Include list here)

The undersigned County Clerk of \_\_\_\_\_ County, Illinois, hereby verifies that the information in this notice is accurate and complete.

(Seal of County Clerk) \_\_\_\_\_ County Clerk (date)

- c) Applicability of Property Tax Extension Limitation Law to Non-Home Rule Multi-County Taxing District - Determination and Notification
- 1) After the Department receives notification of referendum results, the Department shall determine if a non-home rule multi-county taxing district is subject to the Property Tax Extension Limitation Law. When the Department determines that a non-home rule multi-county taxing district becomes subject to the Property Tax Extension Limitation Law, the Department shall notify the governing authority of each such non-home rule multi-county taxing district and the county clerks of all counties in which a portion of the equalized assessed valuation of the district is located that the district is subject to the Property Tax Extension Limitation Law beginning on January 1 of the year following the year in which the referendum was held.
- 2) When the Department determines that a non-home rule multi-county taxing district that was subject to the PTELL is no longer subject to the PTELL, the Department shall notify the governing authority of each such non-home rule multi-county taxing district and the county clerks of all counties in which a portion of the equalized assessed valuation of the district is located that the district is no longer subject to the PTELL beginning on January 1 of the year following the year in which the referendum was held.
- 3) In making the determination of whether the Property Tax Extension Limitation Law is applicable to a non-home rule multi-county

DEPARTMENT OF REVENUE  
NOTICE OF ADOPTED AMENDMENTS

April 12, 1989; amended at 13 Ill. Reg. 7469, effective May 2, 1989; amended at 15 Ill. Reg. 3522, effective February 21, 1991; emergency rule added at 15 Ill. Reg. 14297, effective October 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 2624, effective February 4, 1992; emergency amendment at 17 Ill. Reg. 22584, effective January 1, 1994, for a maximum of 150 days; emergency expired May 30, 1994; amended at 18 Ill. Reg. 15618, effective October 11, 1994; emergency amendment at 19 Ill. Reg. 2476, effective February 17, 1995, for a maximum of 150 days; emergency expired July 16, 1995; emergency amendment at 19 Ill. Reg. 3555, effective March 1, 1995, for a maximum of 150 days; emergency expired July 28, 1995; emergency amendment at 20 Ill. Reg. 7540, effective May 21, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 13611, effective October 3, 1996; amended at 20 Ill. Reg. 13993, effective October 3, 1996; for a maximum of 150 days; emergency expired on April 21, 1997; amended at 21 Ill. Reg. \_\_\_\_\_, effective MAY 2, 1997.

Section 110.192 Property Tax Extension Limitation Law Notification and Determination Requirements After Referendum Under Section 18-213 or 18-214 of the Property Tax Code

- a) Definitions. For purposes of this Section, the terms used in Section 18-213 and 18-214 of the Property Tax Code [35 ILCS 200/18-213 and 18-214] are defined as follows:

"Immediately preceding levy year" means the levy year prior to the year in which the referendum is held.

"Multi-county taxing district" means any taxing district that has equalized assessed valuation for the immediately preceding levy year in more than one county.

- b) Notice of referendum results. The notice of referendum results required from the county clerks under Section 18-213 or 18-214 shall be in substantially the following form:

To: The Illinois Department of Revenue

From: \_\_\_\_\_ County Clerk of \_\_\_\_\_ County

On \_\_\_\_\_ (date) a referendum was held under (select either Section 18-213 or 18-214) in \_\_\_\_\_ County on the applicability of the Property Tax Extension Limitation Law to non-home rule taxing districts in \_\_\_\_\_ County. The result of the referendum was that the question was (approved or not approved).

Following is a list including (1) the name of each non-home rule multi-county taxing district with any portion of its equalized

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

taxing district, the Department shall consider the equalized assessed valuation of the district for the immediately preceding levy year as reported to the Department by the county clerks under Section 18-255 of the Property Tax Code.

4) Changes in the equalized assessed valuation of the district for the immediately preceding levy year, including but not limited to changes due to the assessment of omitted property, the exemption of property from taxation, or a change in the equalized assessed valuation of any property in the district, shall not change the Department's determination or the applicability of the Property Tax Extension Limitation Law to that district.

(Source: Added at 21 Ill. Reg. 692.1, effective 04/2/97)

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENT(S)

- 1) Heading of the Part: The Use of the Capitol Complex Facilities
- 2) Code Citation: 71 Ill. Adm. Code 2005
- 3) Section Number: 2005.40  
Emergency Action: Amendment
- 4) Statutory Authority: Implementing and authorized by Section 5 the Secretary of State Act [15 ILCS 305/5].
- 5) Effective date of the Amendment: May 21, 1997
- 6) Expiration Date: This rule shall expire upon 150 days from the effective date.
- 7) Date filed in agency's principal office: May 21, 1997
- 8) Reason for the emergency: Banners hanging above the first floor in the State Capitol have created public unrest which may impact on public safety. Furthermore, while not wishing to impinge on the First Amendment rights of citizens, the Secretary of State must balance these first amendment rights with the preservation of the dignity of the Capitol Building.
- 9) A Complete Description of the Subjects and Issues Involved: These rules respond to a legislative request, and requests from the public for the Secretary of State to prohibit banners, posters, placards, signs, or symbols from being affixed to the railing of the second, third, or fourth level of the State Capitol Building to preserve the dignity of the State Capitol.
- 10) Are there proposed rules pending on this Part: No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Information and questions regarding this Emergency Amendment shall be directed to:  
  
Carol Sudman  
Assistant Counsel  
Room 298, Howlett Building  
Springfield, IL 62756  
217/785-3094

The full text of the emergency amendments begins on the next page:

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENT(S)

TITLE 71: PUBLIC BUILDINGS, FACILITIES AND REAL PROPERTY  
CHAPTER IV: SECRETARY OF STATE

## PART 2005

## THE USE OF THE CAPITOL COMPLEX FACILITIES

## Section

2005.10 Applicability

2005.20 Definitions

2005.30 Business Hours and Public Access

2005.40 Prohibited Activities

**EMERGENCY**

2005.50 Demonstrations

2005.60 Use of Buildings for Non-Demonstration Activity or Fund Raising Events

2005.70 Distribution of Leaflets and Solicitations of Funds

2005.80 Secretary of State Police Department

2005.90 Severability

**AUTHORITY:** Implementing and authorized by Section 5 of the Secretary of State Act [15 ILCS 305/5].

**SOURCE:** Adopted at 14 Ill. Reg. 7282.9 effective May 1, 1990; emergency amendment adopted at 21 Ill. Reg. 6928.1, effective May 21, 1997, for a maximum of 150 days.

**Section 2005.40 Prohibited Activities****EMERGENCY**

- a) No animals, except guide dogs to assist handicapped persons, shall be permitted in the buildings in the Capitol Complex.
- b) No person or organization shall camp, erect a tent, monument (except as authorized by the Secretary of State to commemorate a deceased public official or a historical event), structure, portable toilet, platform, sign, or similar device on the grounds of or within the State Capitol, Visitors' Center, the Centennial Building, or the Stratton Building, except as provided in subsection (g) of this Section.
- c) No person or organization shall block, obstruct, or impede any doorway, stairway, corridor, or elevator in the Capitol Complex.
- d) No banners, posters, placards, signs or symbols ~~posters or signs~~ may be carried above the first floor of the Capitol Building. No sticks, poles, or laths may be used to carry any sign or placard into the buildings. No chains or ropes may be carried into the buildings, except by authorized workers and State employees, with the permission of the Director.
- e) No person or group of persons shall use any electronic loudspeaker, bullhorn, or other amplifying device within the Capitol Complex

## SECRETARY OF STATE

## NOTICE OF EMERGENCY AMENDMENT(S)

buildings or grounds, unless prior permission of the Director is obtained pursuant to Section 2005.50(d). Permission will be granted for demonstration only.

- f) No banners, posters, placards, signs or symbols may be affixed in any way by any person to the railing of the second, third or fourth floor of the State Capitol Building. No banners, posters, placards, signs or symbols ~~signs or posters~~ for demonstration purposes may be affixed in any way to the walls, railings, floors, or ceilings of any of the buildings in the Capitol Complex.

- g) No displays or structures (including tents) in the buildings or on the grounds may be erected without the permission of the Director pursuant to Section 2005.50(d). Permission shall be granted only if the display structure is part of symbolic expression in the exercise of free speech guaranteed by the First Amendment to the United States Constitution and Article I, Sections 4 and 5 of the 1970 Illinois Constitution. No more than 2 tents or small structures may be erected at the location designated by the Director, which location will not impede pedestrian or vehicular traffic or substantially damage the Capitol grounds i.e., damage to grass or grounds which would require replacement. The only locations which are authorized for structures and displays shall be the paved areas between the Centennial Building and the Capitol Building, in the north front of the Centennial Building and between the Stratton Building and the Archives Building. No structures or displays will be placed on grass areas which have an underground watering system on them.

- h) The display of commercial signs, placards, or other forms of advertisement, or the sale, display, or vending of commercial products or articles in the buildings or on the grounds is prohibited, except pursuant to contract with the State Government.

- i) The noise level from demonstrators, picketers, and protesters of any group or groups, or as individuals within the Capitol Building rotunda shall not exceed a decibel level of 85dB(A). If the noise level from these persons exceeds this limit, the Director shall direct all persons to decrease the noise or to reduce the numbers of people within the Capitol Building to lower the noise level to the specified level, which shall not exceed 75dB(A).

- j) No person or organization shall damage, destroy, remove, deface, defile, tarnish, or injure in any way State property within the buildings or on the grounds thereof. All persons and organizations engaging in this type of prohibited activity will be responsible for all costs, expenses, damages, and liability resulting from their own actions or the actions of persons or organizations controlled or directed by them at the time of the damage to state property.

- k) No skateboarding riding is allowed in the Capitol Complex.

(Source: Emergency amendment at 21 Ill. Reg. \_\_\_\_\_, effective May 21, 1997, for a maximum of 150 days)



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PUBLIC HEARING ON PROPOSED RULES

1) Heading of the Part: Sport Fishing Regulations for the Waters of Illinois

2) Code Citation: 17 Ill. Adm. Code 810

3) Register Citation to Notice of Proposed Amendments:

21 Ill. Reg. 5392; May 2, 1997

4) Date, Time and Location of Public Hearing:

Thursday, June 5, 1997, 10:00 a.m.  
James R. Thompson Center  
100 W. Randolph  
Suite 2-025  
Chicago, Illinois

5) Other Pertinent Information: Individuals who are unable to attend the public hearings but wish to comment on the Proposed Amendments should submit written comments by June 5, 1997, to:

Jack Price  
Department of Natural Resources  
524 S. Second Street  
Springfield, IL 62701-1787  
Telephone: 217/782-1809  
Fax: 217/524-9640

All comments received will be fully considered by the agency.

## DEPARTMENT OF REVENUE

## NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

1) Heading of the Part: Retailer's Occupation Tax

2) Code Citation: 86 Ill. Adm. Code 130

3) Section Numbers: Action:  
130.331 New Section

4) Date Notice of Proposed Amendments Published in the Illinois Register:  
June 14, 1996, 20 Ill. Reg. 7773

5) Reason for Withdrawal: Discussions with taxpayer representatives have led the Department to make important changes to the proposed amendments. The Department is withdrawing these proposed amendments and will propose new amendments.

## DEPARTMENT OF REVENUE

## NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Gas Revenue Tax
- 2) Code Citation: 86 Ill. Adm. Code 470
- 3) Section Numbers:  
470.171 Action:  
New Section
- 4) Date Notice of Proposed Amendments Published in the Illinois Register:  
June 21, 1996, 20 Ill. Reg. 8295
- 5) Reason for Withdrawal: Discussions with taxpayer representatives have led the Department to make important changes to the proposed amendments. The Department is withdrawing these proposed amendments and will propose new amendments in order to give the public a chance to comment on the changes incorporated into the new proposed amendments.

## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

- a) Part(s) (Heading and Code Citation): Control of Tuberculosis Code (77 Ill. Adm. Code 696)
  - 1) Rulemaking:
    - A) Description: The Department's current tuberculosis prevention and control rules (Section 690.720 of the Control of Communicable Diseases Code (77 Ill. Adm. Code 690)) were adopted in 1985, and amended in 1988. Since that time, accepted practices in addressing TB disease have changed dramatically, resulting in rules that do not reflect currently accepted methods of TB prevention and control. Proposed rules will include current methods of preventing and controlling the spread of TB, and procedures for enforcement of TB prevention and control requirements. Specifically, the rules will address screening for TB infection and disease, management of persons with TB infection, diagnosis and management of persons with suspected or confirmed TB disease, reporting, and enforcement procedures. The responsibilities of health professionals and patients to whom the rules are applicable are also included.
    - B) Statutory Authority: Implementing the Communicable Disease Report Act [745 ILCS 45] and implementing and authorized by the Department of Public Health Act [20 ILCS 2305].
    - C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will be provided upon publication of the first notices in the *Illinois Register*.
    - D) Date Agency Anticipates First Notice: The Notice of Proposed Rulemaking will be published by June 1, 1997.
    - E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: The rulemaking will require healthcare facilities and high-risk congregate settings, as defined in the draft rules, that are small businesses to conduct TB screening for certain patients/residents and employees.
    - F) Agency Contact Person for Information:  
  
Gail M. Devito  
Administrative Rules Coordinator  
Division of Governmental Affairs  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
(217) 782-6187

## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

G) Other Pertinent Information Concerning this Rulemaking: None

b) Part(s) (Heading and Code Citation): Hospice Programs (77 Ill. Adm. Code 280)

1) Rulemaking:

A) Description: In response to P.A. 89-278, the Department is developing standards for freestanding "hospice residences" relating to safety, cleanliness, admission, discharge, transfer of residents, medical and support services, procedures for reporting abuse, maintenance of records, and resident access to those records.

B) Statutory Authority: Hospice Program Licensing Act [210 ILCS 60]

C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will be provided upon publication of the first notices in the *Illinois Register*.

D) Date Agency Anticipates First Notice: The Notice of Proposed Rulemaking will be published approximately July 1, 1997.

E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: The rulemaking is not anticipated to affect small businesses.

F) Agency Contact Person for Information:

Gail M. DeVito  
Administrative Rules Coordinator  
Division of Governmental Affairs  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
(217) 782-6187

G) Other Pertinent Information Concerning this Rulemaking: None

c) Part(s) (Heading and Code Citation): Violent Injury Reporting Code (New Part: code citation has not been designated)

1) Rulemaking:

A) Description: Rules are being drafted to implement P.A. 89-242, which requires the Department to establish a reporting system for

## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

each injury allegedly caused by a violent act. The reporting system will be coordinated with existing reporting requirements, such as trauma and head and neck injury reporting, to reduce duplication of reporting. The rules for violent injury reporting will coordinate reporting requirements with those in the Department's rules entitled "Head and Spinal Cord Injury Code".

B) Statutory Authority: Section 55.80 of the Civil Administrative Code of Illinois [20 ILCS 2310/55.80].

C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will be provided upon publication of the first notices in the *Illinois Register*.

D) Date Agency Anticipates First Notice: The Notice of Proposed Rulemaking will be published approximately July 1, 1997.

E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: The rulemaking is not anticipated to affect small businesses.

F) Agency Contact Person for Information:

Gail M. DeVito  
Administrative Rules Coordinator  
Division of Governmental Affairs  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
(217) 782-6187

G) Other Pertinent Information Concerning this Rulemaking: None

d) Part(s) (Heading and Code Citation): Head and Spinal Cord Injury Code (77 Ill. Adm. Code 550)

1) Rulemaking:

A) Description: Amendments have been drafted to facilitate reporting for all facilities required to report to the Head and Spinal Cord Registry and to coordinate reporting requirements with the new Violent Injury Reporting Code. The rules will also include the interagency agreement that is executed with researchers who request data for use in research projects.

B) Statutory Authority: Section 55.39 of the Civil Administrative Code of Illinois [20 ILCS 2310/55.39].



## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

- C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will be provided upon publication of the first notices in the *Illinois Register*.
- D) Date Agency Anticipates First Notice: The Notice of Proposed Rulemaking will be published approximately July 1, 1997.
- E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: The rulemaking is not anticipated to affect small businesses.
- F) Agency Contact Person for Information:  
 Gail M. DeVito  
 Administrative Rules Coordinator  
 Division of Governmental Affairs  
 535 West Jefferson, Fifth Floor  
 Springfield, IL 62761  
 (217) 782-6187
- G) Other Pertinent Information Concerning this Rulemaking: None

e) Part(s) (Heading and Code Citation): Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300); Sheltered Care Facilities Code (77 Ill. Adm. Code 330); Illinois Veterans' Home Code (77 Ill. Adm. Code 340); Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350); and Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390)

1) Rulemaking:

- A) Description: Draft amendments to the above-listed Parts will implement Public Act 89-530 (effective July 19, 1996), which amended the Illinois Act on the Aging, the Illinois Health Facilities Planning Act, and the Nursing Home Care Act. The rules will set up a procedure whereby the Department of Public Health may grant waivers from the requirements of the Nursing Home Care Act for facilities participating in the supported congregate living arrangement demonstration project authorized by the Illinois Act on the Aging. The rulemaking will provide the information that must be included on a waiver application; reference the criteria under which the application will be evaluated; and list the circumstances under which the Department may revoke the waiver. The amendments will also revise requirements for disaster preparedness for facilities licensed under the above-listed rules. Facilities will be required to

## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

develop a written plan for moving residents to safe locations within the facility in the event of a tornado warning or severe thunderstorm warning. An established means of facility notification will be required when the National Weather Service issues a tornado or severe thunderstorm warning that covers the area in which the facility is located. Fire drills must be held at least quarterly, for each shift of personnel, and disaster drills for other than fire must be held twice annually, for each shift of personnel.

- B) Statutory Authority: The Nursing Home Care Act [210 ILCS 45].
- C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will be provided upon publication of the first notices in the *Illinois Register*.
- D) Date Agency Anticipates First Notice: The Notice of Proposed Rulemaking will be published by June 1, 1997.
- E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: Long-term care facilities that are small businesses will be required to comply with the requirements specified in the rulemaking. The Department does not anticipate any economic impact on small businesses as a result of the rulemaking.
- F) Agency Contact Person for Information:  
 Gail M. DeVito  
 Administrative Rules Coordinator  
 Division of Governmental Affairs  
 535 West Jefferson, Fifth Floor  
 Springfield, IL 62761  
 (217) 782-6187
- G) Other Pertinent Information Concerning this Rulemaking: The draft amendments were approved by the Long-Term Care Facility Advisory Board at its April 1997 meeting.

f) Part(s) (Heading and Code Citation): Emergency Medical Services and Trauma Center Code (77 Ill. Adm. Code 515)

1) Rulemaking:

- A) Description: Amendments to Part 515 are being developed to implement P.A. 89-667, which amended the Emergency Medical

## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

## Services (EMS) Systems Act to:

- 1) Allow the Department to investigate the circumstances that caused a hospital to go on bypass status to determine whether the decision was reasonable. The Department is also authorized to impose sanctions.
  - 2) Require EMS systems and trauma centers to establish internal disaster plans, which are to include contingency plans for the transfer of patients to other facilities if an evacuation of the hospital becomes necessary due to a catastrophe such as a power failure.
- B) Statutory Authority: Sections 3.20 and 3.30 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/3.20 and 3.30].
- C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will be provided upon publication of the first notices in the *Illinois Register*.
- D) Date Agency Anticipates First Notice: The Notice of Proposed Rulemaking will be published after July 1, 1997.
- E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: The rulemaking will affect EMS providers that are small businesses.

F) Agency Contact Person for Information:

Gail M. DeVito  
Administrative Rules Coordinator  
Division of Governmental Affairs  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
(217) 782-6187

G) Other Pertinent Information Concerning this Rulemaking: None

- g) Part(s) (Heading and Code Citation): Freestanding Emergency Medical Center Demonstration Program (New Part: code citation has not been assigned)

1) Rulemaking:

- A) Description: The Department is developing rules to implement a demonstration program for freestanding emergency centers that provide comprehensive emergency treatment services on an

## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

outpatient basis. The rules will include requirements for facility design, specification, operation and maintenance; equipment; and personnel.

- B) Statutory Authority: Sections 32.5 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/32.5].
- C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will be provided upon publication of the first notices in the *Illinois Register*.
- D) Date Agency Anticipates First Notice: The Notice of Proposed Rulemaking will be published after July 1, 1997.
- E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: The rulemaking will not affect small businesses.
- F) Agency Contact Person for Information:

Gail M. DeVito  
Administrative Rules Coordinator  
Division of Governmental Affairs  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
(217) 782-6187

G) Other Pertinent Information Concerning this Rulemaking: None

- h) Part(s) (Heading and Code Citation): Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300); Sheltered Care Facilities Code (77 Ill. Adm. Code 330); Illinois Veterans' Home Code (77 Ill. Adm. Code 340); Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350); and Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390)

1) Rulemaking:

- A) Description: Draft amendments to the above-listed Parts will require new long-term construction to comply with the 1997 Life Safety Code.
- B) Statutory Authority: The Nursing Home Care Act [210 ILCS 45].
- C) Schedule of Dates for Hearings, Meetings, or Other Opportunities for Public Participation: An opportunity for public comment will

## DEPARTMENT OF PUBLIC HEALTH

## JULY 1997 REGULATORY AGENDA

be provided upon publication of the first notices in the *Illinois Register*.

D) Date Agency Anticipates First Notice: the Notices of Proposed Rulemaking will be published by July 1, 1997.

E) Effect on Small Businesses, Small Municipalities, and Not-for-Profit Corporations: Long-term rulemaking that are small businesses will be required to comply with the requirements specified in the rulemaking.

F) Agency Contact Person for Information:

Gail M. DeVito  
Administrative Rules Coordinator  
Division of Governmental Affairs  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
(217) 782-6187

G) Other Pertinent Information Concerning this Rulemaking: The draft amendments were approved by the Long-Term Care Facility Advisory Board at its April, 1997 meeting. The Board rejected changes to require existing construction to comply with the 1997 Life Safety Code.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of May 20, 1997 through May 26, 1997 and have been scheduled for review by the Committee at its June 17, 1997 meeting in Chicago. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 701 Stratton Bldg., Springfield, IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
7/4/97	Northeastern Illinois Commission, Fees for Reviewing Applications to Change the Boundaries of a Wastewater Facility Planning Area (35 Ill Adm Code 399)	2/21/97 41 Ill Reg 4258	6/17/97
7/4/97	Department of Natural Resources, White-Tailed Deer Hunting Season by Use of Handguns (17 Ill Adm Code 680)	4/4/97 21 Ill Reg 4285	6/17/97
7/4/97	Department of Natural Resources, Squirrel Hunting (17 Ill Adm Code 690)	4/4/97 21 Ill Reg 4283	6/17/97
7/4/97	Department of Natural Resources, The Taking of Wild Turkeys - Fall Gun Season (17 Ill Adm Code 715)	4/4/97 21 Ill Reg 4279	6/17/97
7/4/97	Department of Natural Resources, The Taking of Wild Turkeys - Fall Archery Season (17 Ill Adm Code 720)	4/4/97 21 Ill Reg 4271	6/17/97
7/4/97	Department of Natural Resources, Crow, Woodcock, Snipe, Rail and Teal Hunting (17 Ill Adm Code 740)	4/4/97 21 Ill Reg 4206	6/17/97
7/5/97	Department of Natural Resources, Cock Pheasant, Hungarian Partridge, Bobwhite Quail, and Rabbit Hunting (17 Ill Adm Code 530)	4/4/97 21 Ill Reg	6/17/97
7/5/97	Department of Natural Resources, Raccoon, Opossum, Striped Skunk, Red Fox, Gray Fox, Coyote and Woodchuck	4/4/97 21 Ill Reg 4215	6/17/97



JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

(Groundhog) Hunting (17 Ill Adm Code 550)

7/5/97 Department of Natural Resources, 4/4/97 6/17/97  
Muskra, Mink, Raccoon, Opossum, 21 Ill Reg  
Striped Skunk, Weasel, Red Fox, Gray 4248  
Fox, Coyote, Badger, Beaver and  
Woodchuck (Groundhog) Trapping (17 Ill  
Adm Code 570)

7/6/97 Department of Agriculture, Meat and 4/4/97 6/17/97  
Poultry Inspection Act (8 Ill Adm Code 21 Ill Reg  
125) 4067

Rules acted upon during the quarter of April 1 through June 30, 1997 (Issues 17-28) are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 Ill. Adm. Code 4401 published in Issue 40 will be listed as 50-4401-2. The letter "R" designates a rule that is being repealed. The quarterly Sections Affected Index and Cumulative Index will be published in Issue 29 (July 15); Issue 42 (October 17); and Issue 3 (January 16, 1998). Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or [jnatale@ccgate.sos.state.il.us](mailto:jnatale@ccgate.sos.state.il.us) (Internet address).

## PROPOSED

4-175-21 89-121-18 59-113-20  
89-144-20 59-115-20  
11-415-18 89-147-20 59-119-20  
17-810-18 89-290-23 68-1150-19  
17-1585-18 89-301-17 68-1455-18  
17-4190-23 89-302-22 71-400R-19  
20-1215-18 89-309-22 71-400-19  
20-1285-18 89-401-22 77-515-17  
23-1501-20 89-1200-22 77-535R-17  
32-401-21 92-1040-17,18 77-540R-17  
35-307-20 77-542R-17  
38-1050-20 ADOPTED 77-1100-21  
44-650-18 2-951-17 80-310-17,22  
47-110-21 8-270-18 80-420-19  
47-370R-17 8-281-18 80-1600-20  
47-371-17 11-100-18 83-761-22  
50-3119-22 11-315-22 80-763-22  
59-113-23 11-316-22 86-110-23  
59-115-23 11-317-22 89-140-23  
59-119-23 17-650-18 89-240-21  
59-121-23 17-660-18 89-280-23  
68-1252-18 17-670-18 89-302-21  
68-1270-20 17-850-18 89-305-21  
68-1380-20 17-2520-22 92-1030-22  
68-1400-22 20-405-19  
68-1480-20,21 20-415-19  
74-1000-19 23-1501-19  
77-300-23 35-211-22  
77-330-23 35-232-21  
77-340-23 35-310-17  
77-350-23 35-506-23  
77-390-23 35-601-22  
77-693-23 35-602-22  
77-860R-19 35-603-22  
77-860-18,19 35-607-22  
77-920-17 35-615-22  
77-925-17 35-616-22  
80-150-23 35-617-22  
80-1600-20 35-620-22  
86-130-23 50-855-19  
86-470-23 53-200-23  
86-495-17 56-353-23  
86-1910-19 56-6000-17

## EMERGENCY

17-810-18  
47-370R-17  
40-371-17  
68-1252-18  
71-2005-23



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